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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1929

INTERSTATE COMMERCE COMMISSION,
Petitioner,

vs.

UNITED STATES OF AMERICA, at the relation of CITY OF LOS ANGELES, a municipal corporation,
Respondent.

On Writ of Certiorari to the Court of Appeals of the District of Columbia.

BRIEF OF CITY OF LOS ANGELES IN REPLY TO BRIEF OF INTERSTATE COMMERCE COMMISSION.

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UNITED STATES OF AMERICA, at the relation of CITY OF LOS ANGELES, a municipal corporation,
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On Writ of Certiorari to the Court of Appeals of the District of Columbia.

BRIEF OF CITY OF LOS ANGELES IN REPLY TO BRIEF OF INTERSTATE COMMERCE COMMISSION.

The Facts.

I.

STATEMENT OF CASE.

1. THE ISSUE.

The question at issue in this proceeding is whether the Interstate Commerce Commission has the jurisdiction to make an order requiring the Southern Pacific Company (hereinafter at times referred to as the Southern Pacific), The Atchison, Topeka and Santa Fe Railway Company (hereinafter at times referred to as the Santa Fe) and Los Angeles & Salt Lake Railroad Company (a portion of the Union Pacific's System and hereinafter at times referred to as the Salt Lake) to construct, maintain and operate a union passenger station in a specified area near the Plaza in the City of Los Angeles under the facts which are conceded in this record.

We do not agree with learned counsel for the Interstate Commerce Commission when he says (Brief of Interstate Commerce Commission, p. 2) that the question is:

> "Whether the Commission has the direct and affirmative authority to require railroads serving *a* city to construct a new union passenger station and use the same in lieu of their existing terminals."

We believe that, as thus stated, the question is too broad.

(NOTE: Throughout this brief, italics, unless otherwise stated, are ours. The printed "Transcript of Record" will be thus referred to throughout this brief—R. ——).

As this Court said in *Railroad Commission of California v. Southern Pacific Company*, 264 U. S. 331, 345 (which case will hereinafter at times be referred to as the *Los Angeles Union Station Case*):

> "One might, too readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of *merely local union stations* or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the state for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers. Only a lawful order of the Interstate Commerce Commission would raise a question of the power of a state commission in such cases, as the proviso of Paragraph 17, Section 402, of the Transportation Act, shows.
>
> "*But there is a great difference between such relocation of tracks or local union stations and what is proposed here.* The differences are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind."

The great differences between these two classes of cases had already been emphasized by this Court when it pointed out that we are dealing here with "three great interstate railway systems in the largest city of our western coast" (p. 342).

We submit, very respectfully, that the real question now before this Court is whether the Interstate Commerce Commission has the jurisdiction to make an

order requiring said "three great interstate railway systems" to construct, maintain and operate a union passenger station in a specified area near the Plaza in "the largest city of our western coast", when the conceded facts show that the carriers not merely already own substantially all the trackage which would be jointly used but also have recently purchased and at this time own more than two-thirds in area of the land on which the union passenger station and appurtenances would be constructed.

This question is considerably narrower and more restricted than the question as stated by counsel for the Interstate Commerce Commission.

In its first decision in the *"Los Angeles Passenger Terminal Cases"* (100 I. C. C. 421, 426, 430), the Interstate Commerce Commission held that it does not have such jurisdiction and hence refused to give any consideration to matters shown of record for the purpose of determining whether the Commission should issue the requested *order requiring* the construction and use of a union passenger station by said carriers. The Commission said (p. 430):

> "We conclude that we are not empowered to require the construction of a union passenger station as sought in No. 14,778 * * * we will give no consideration to matters shown of record for the purpose of determining whether we should issue an order *requiring* the construction and use of a union station by any of the defendants." (Italics by Commission.)

In its second decision, 142 I. C. C. 489, the majority of the Commission reached the same conclusion (p. 496).

On the *merits*, the Commission made all the findings of fact and issued the certificates requested by the City of Los Angeles in said Docket No. 14,778.

In its said *first* decision, the Commission made all the *findings of fact* requested by the City but deferred issuing its *certificates*. In its said *second* decision, the Commission affirmed its *findings of fact* and also issued all the *certificates* necessary under this Court's decision in the *Los Angeles Union Station Case*, 264 U. S. 331.

On the question of *law*, however, the Commission held in both decisions that it did not have the authority to make the final *order requiring* said carriers to construct and operate said union passenger station. The Commission, accordingly, refused to consider the evidence bearing on said issue of law.

The City of Los Angeles has consistently taken the position, ever since it filed its complaint with the Interstate Commerce Commission in said Docket No. 14,778, in 1923, that the Interstate Commerce Commission does have the jurisdiction to make said final *order*. The City has instituted the present proceeding for the purpose of securing a writ of mandamus directing the Interstate Commerce Commission to consider the evidence bearing on said issue of law

and thereafter to make such order as, in the opinion of the Commission, the facts and the merits justify and require.

On February 25, 1929, the Court of Appeals of the District of Columbia held with the City of Los Angeles and directed that the writ of mandamus should issue (R. 163-170).

From that decision, the Interstate Commerce Commission has prosecuted the present proceeding.

2. THE PLEADINGS.

a. Petition for Writ.

The petition for the writ may be briefly summarized as follows:

Paragraph I alleges that the City of Los Angeles is a California municipal corporation which is located in the County of Los Angeles, State of California (R. 2).

Paragraph II alleges that the Interstate Commerce Commission was created by the Act of Congress of February 4, 1887, refers to the statutes specifying the Commission's powers, duties and responsibilities and alleges that the Commission's principal office is in the City of Washington (R. 2).

Paragraph III alleges that the Southern Pacific, the Santa Fe, the Salt Lake and three other specified carriers are common carriers engaged in transport-

ing passengers and property by railroad to, from and through the City of Los Angeles in interstate and also intrastate commerce, and that each of said carriers is subject to the Act to Regulate Commerce and the acts supplemental thereto and amendatory thereof; also contains allegations with reference to the ownership and operation of the lines of railroad of said carriers; also refers to a map which will be found opposite R. 28, which map shows the location of the lines of railroad of said carriers in the City of Los Angeles (R. 2-3).

Paragraphs IV, V and VI set forth certain physical facts which will be referred to in somewhat more detail in a subsequent portion of this brief under the head of "Physical Facts". Paragraph IV describes the location of the lines of railroad of said carriers in the City of Los Angeles, contains information with reference to the volume of passenger business of said carriers into and out of Los Angeles and draws attention to the fact that the predominating passenger traffic of said carriers in the City of Los Angeles is to and from the north and east (R. 3-6). Paragraph V is addressed to the Alameda Street railroad grade crossing situation and contains allegations with reference to the interest and responsibility of the Southern Pacific, the Santa Fe and the Salt Lake in connection with said railroad grade crossing situation (R. 6-7). Paragraph VI deals with the subject of the existing passenger depots of the Southern Pacific, the Santa Fe and the Salt Lake in the City of Los Angeles (R. 7-9).

Paragraph VII alleges that it is necessary and that the public safety, convenience and necessity require, that the Southern Pacific, the Santa Fe and the Salt Lake construct, maintain and operate a union passenger station and incidental facilities in the Plaza Area in the City of Los Angeles; that if such union passenger station be not constructed, it would nevertheless be necessary for said carriers to expend individually, in the immediate future, several million dollars for the purpose of establishing adequate and convenient passenger station facilities in the City of Los Angeles; and that it is greatly in the public interest and in the interest of said carriers themselves that these expenditures, instead of being made in a competitive and largely wasteful manner, each carrier seeking primarily to advance its own competitive interest or the interest of itself and its particular associates, should be made in a unified manner and in such a way as to avoid duplicate investments and operating expenses, prevent wasteful expenditures and serve the public interest (R. 9-10).

Paragraphs VIII to XV, inclusive, summarize the history of the Los Angeles Passenger Terminal Cases and trace their progress through the Railroad Commission of California, the Supreme Court of California, the Supreme Court of the United States, the Interstate Commerce Commission, the Railroad Commission of California for the second time and the Interstate Commerce Commission for the second time (R. 10-22). A more detailed reference to these allegations of the petition will be set forth in a subse-

quent portion of this brief under the head of "Historical Facts".

Paragraph XVI quotes certain provisions of the Interstate Commerce Act, relied on by the City of Los Angeles, being Paragraphs 3 and 4 of Section 3, Paragraph 21 of Section 1 and a portion of Section 12 (R. 22-4).

Paragraph XVII alleges that each finding of fact contained in the specified decisions of the Interstate Commerce Commission and of the Railroad Commission of California is true and is shown by the evidence before the Interstate Commerce Commission in its said Docket No. 14,778; that a union passenger station constructed, operated and maintained by the Southern Pacific, the Santa Fe and the Salt Lake on said Plaza Area, as prayed for by the City of Los Angeles in said Docket No. 14,778, is a reasonable, proper and necessary facility for the receiving, forwarding and delivering of passengers to and from the several lines of said carriers and lines connecting therewith; that the present and future public convenience and necessity require the construction, maintenance and use of said union passenger station by said carriers and such abandonments and extensions of lines of railroad as are incidental thereto; and that the expense involved will not impair the ability of said carriers to perform their duty to the public. Said Paragraph XVII also alleges that the City of Los Angeles, by formal resolution of its City Council now in full force and effect stands ready to grant such franchises or permits and to enact such ordinances for the opening or closing of

all such public street areas as may be necessary to make fully effective the order for which the City prays in its said Docket No. 14,778 before the Interstate Commerce Commission (R. 24-5).

Paragraph XVIII shows the extent to which the operation of said union passenger station in the Plaza Area in Los Angeles will require the joint use of existing railroad terminal facilities in or adjacent to the City of Los Angeles and alleges that of the total area of 37 acres which would be required for the proposed union passenger station 26.87 acres, being more than two-thirds of the total area, is already railroad terminal land owned by the Southern Pacific and to a small extent by the Santa Fe (R. 25-6). These allegations will be considered in further detail in a subsequent portion of this brief in connection with the Commission's jurisdiction under Paragraph 4 of Section 3 of the Act.

Paragraph XIX refers to the extensions and abandonments of railroad property and the joint use thereof which would be incidental to the use of said union passenger depot (R. 26).

Paragraph XX alleges that the refusal of the Interstate Commerce Commission to consider the evidence in said Docket No. 14,778 for the purpose of determining whether the Commission should issue the order requested by the City of Los Angeles requiring the construction and use by said carriers of said union passenger depot was based solely on a matter of law, namely, on the Commission's opinion that it does not

have the power, authority and jurisdiction to give such consideration to the evidence or to make such order; that in entertaining said opinion the Commission was and is mistaken as a matter of law; that as a matter of law the Commission does have the power, authority and jurisdiction to consider said evidence for the purpose of determining whether it should issue the order as prayed for requiring the construction and use of said union passenger station and thereafter to make an appropriate order based on said evidence; and that, as a matter of law, it is the duty of the Interstate Commerce Commission to give consideration to such evidence and thereupon to issue such order as the facts and the merits justify and require (R. 26-7).

Paragraph XXI alleges that each allegation of fact in the petition and each finding of fact made by the Interstate Commerce Commission or by the Railroad Commission of California is shown by the evidence in the record before the Interstate Commerce Commission in said Docket No. 14,778 (R. 27).

Paragraph XXII alleges that petitioner has no plain, speedy or adequate remedy in the ordinary course of law (R. 27).

The relief prayed for is that peremptory writ of mandamus issue commanding and directing the Interstate Commerce Commission to consider the evidence in its said Docket No. 14,778 for the purpose of determining whether the Commission should issue an order requiring the construction and use of a union passenger station in the City of Los Angeles by the

Southern Pacific, the Santa Fe and the Salt Lake as prayed for by the City of Los Angeles in said Docket No. 14,778 and thereafter to make such order as the facts and the merits justify and require, or, in the alternative, for the issuance of a rule to show cause why a writ should not be issued (R. 27-8).

Copies of the following documents are attached as exhibits to the petition and made a part thereof:

Exhibit A—The complaint of the City of Los Angeles before the Interstate Commerce Commission in said Docket No. 14,778, filed in March, 1923, the first page of which complaint is preceded by a map showing the location of the lines of railroad in the City of Los Angeles in so far as pertinent to this proceeding (R. 29-47);

Exhibit B—First decision of Interstate Commerce Commission in Los Angeles Passenger Terminal Cases—July 6, 1925 (100 I. C. C. 421) (R. 49-96);

Exhibit C—Second decision of Railroad Commission of California—July 8, 1927 (Volume 30, Opinions and Orders, Railroad Commission of California, page 151) (R. 97-114);

Exhibit D—Petition of City of Los Angeles to Interstate Commerce Commission for issuance of certificates and making of final order—July 25, 1927. To this document is attached a copy of California Railroad Commission's Exhibit 4B, showing the plan for the proposed union passenger terminal at the Plaza in Los Angeles (R. 115-128); and

Exhibit E—Second decision of Interstate Commerce Commission in Los Angeles Passenger Terminal Cases—May 8, 1928 (142 I. C. C. 489). To this decision are attached as Appendix No. 1 the 6 numbered findings of fact made by the Interstate Commerce Commission and the Railroad Commission of California and the 4 additional findings of fact made by the Railroad Commission of California and found by the Interstate Commerce Commission to be sufficiently supported by the evidence (R. 128-149).

b. Answer of Interstate Commerce Commission.

The Answer of the Interstate Commerce Commission, either by direct admission or by failure to deny, admits all the allegations of fact of the Petition except only the following which we believe may be considered not material and as to which the Commission alleges that it has *no information or belief:*

(a) Allegation that the carriers have made frequent public admission of the necessity, in the public interest, of eliminating all railroad operations along Alameda Street, in Los Angeles, except only industrial switching for freight (Paragraph V of Petition for Writ, R. 6).

(b) Allegations that the total value of the Santa Fe's present passenger station building in Los Angeles with all furniture, parking and paving, does not exceed $50,000.00; that the officials of the Santa Fe have on numerous occasions made

public acknowledgment of the inadequacy of the present passenger station and facilities and of the necessity for an adequate, up-to-date passenger station; and that such station and facilities if provided by the Santa Fe independently without reference to a union passenger station, would cost approximately $1,182,317.00 (Paragraph VI of Petition for Writ, R. 8).

(c) Allegation that the only plan for the elimination of the existing dangerous railroad grade crossings along Alameda Street in Los Angeles consistent with the public convenience and necessity and safety is to change the location of the Southern Pacific's present passenger depot to a site in the vicinity of the Plaza, near the northern entrance to the City, by which plan the trains of the Southern Pacific will be kept off Alameda Street and the Alameda Street grade crossing problem will automatically be solved (Paragraph VI of Petition for Writ, R. 9).

Apart from the above three matters, which we believe are not necessary in the consideration of the issue now before this tribunal, the answer of the Interstate Commerce Commission either expressly or impliedly admits the truth of all allegations of fact in the Petition for the Writ.

While said answer, in the last paragraph of Section IV thereof, denies the allegations of the petition except as expressly admitted, such denial is only "in so far as they *conflict*" either with the allegations of said

answer or with the statements or conclusions of fact contained in the Commission's two decisions of July 6, 1925 and May 8, 1928, which decisions are made a part of the answer. Careful analysis of the petition and the answer shows that no other allegation of the petition as to any question of fact in any way *conflicts* with the allegations of said answer or said two decisions.

c. Demurrer of Relator to Answer.

The relator filed its demurrer to the Commission's said answer, thereby raising squarely the issue of law as to the Commission's jurisdiction, which issue both the relator and the respondent desire to have decided (R. 156-7).

3. ACTION BY SUPREME COURT OF THE DISTRICT OF COLUMBIA.

On October 18, 1928, the matter of the argument on the relator's demurrer to the answer of the Interstate Commerce Commission came on before Honorable William Hitz, Justice of the Supreme Court of the District of Columbia.

The court, at that time, made its order overruling said demurrer, whereupon the City of Los Angeles advised the court that it elected to stand upon its petition. The court thereupon entered judgment dismissing said petition, whereupon the City of Los Angeles noted its appeal in open court to the Court of Appeals.

The appeal was thereupon perfected.

4. ACTION BY COURT OF APPEALS OF DISTRICT OF COLUMBIA.

On January 8, 1929, the appeal was argued before the Court of Appeals of the District of Columbia.

On February 25, 1929, the Court of Appeals, in a decision written by Associate Justice Van Orsdel and concurred in by Chief Justice Martin and Associate Justice Robb, reversed the judgment of the Supreme Court of the District and directed that the writ should issue.

This decision carefully reviewed all the issues presented in briefs and argument by the Interstate Commerce Commission and the City of Los Angeles and also in a brief filed as *amici curiae* by the railroad companies and held that the Interstate Commerce Commission has the power to make an order *requiring* said railroad companies to construct and operate said union passenger station in the designated area near the Plaza in the City of Los Angeles, as urged by the City.

The decision of the Court of Appeals has not, as far as we have been advised, been published. It appears on pages 163 to 170 of the Record.

II.

PHYSICAL FACTS.

The physical facts with reference to the location of the existing lines of railroad of the Southern Pacific, the Santa Fe and the Salt Lake in the City of

Los Angeles, the existing passenger depot facilities, the area in the Plaza District in the City of Los Angeles specified in the decisions of the Railroad Commission of California and referred to in the decisions of the Interstate Commerce Commission as the location for the proposed union passenger depot, and all other physical facts bearing on the present issue, are set forth in Paragraphs IV-VI, inclusive, of the Petition for the Writ and in the decisions of the Interstate Commerce Commission of July 6, 1925, (100 I. C. C. 421), of the Railroad Commission of California of July 8, 1927 (Volume 30, Opinions and Orders, Railroad Commission of California, page 151), and of the Interstate Commerce Commission of May 8, 1928, (142 I. C. C. 489) copies of which decisions, as already noted, are attached to the Petition for the Writ and made a part thereof as Exhibits B, C and E, respectively (R. 49-96, 97-114, 128-149).

The tracks, existing passenger station facilities and area for proposed union passenger station are shown on map marked Exhibit No. 1, copy whereof is inserted opposite the first page of Exhibit A to the Petition for the Writ (R. opposite p. 28).

The plan for the proposed union passenger terminal at the Plaza in Los Angeles is shown on an exhibit marked "C. R. C. Exhibit 4 B", copy whereof is attached to Exhibit D to the Petition for the Writ, at the end of said exhibit (R. opposite p. 128).

1. LINES OF RAILROAD.

The location and volume of passenger traffic of the lines of railroad of the Southern Pacific, the Santa Fe and the Salt Lake within the City of Los Angeles are referred to in Paragraph IV of the Petition for the Writ (R. 3-6).

After a preliminary paragraph which sets forth, in a general way, the facts with reference to the general northerly and southerly location of the tracks of the carriers through the City of Los Angeles and the interference of said tracks at grade with intercommunication between the portions of the City of Los Angeles and other communities located on either side thereof, said Paragraph IV proceeds with more specific allegations with reference to the location of the tracks of the Southern Pacific, the Santa Fe and the Salt Lake, as follows:

a. Southern Pacific.

With reference to the tracks of the Southern Pacific, said Paragraph IV of the Petition alleges as follows:

> "That the so-called 'Coast' and 'Valley' routes of the Southern Pacific Company, herein at times called the Southern Pacific, connecting Los Angeles with San Francisco and with the San Joaquin and Sacramento Valleys, unite at Burbank about 12 miles north of said Southern Pacific Company's so-called Arcade Station in Los Angeles, and extend southerly along the east bank of the Los Angeles River to its juncture with the Arroyo Seco, which drains the territory to the

northeast, in the vicinity of Pasadena; that at said Arroyo Seco, the said Southern Pacific Company's said line of railroad crosses from the east bank to the west bank of the Los Angeles River and thence continues southerly along the river to the North Broadway Viaduct; that the line then crosses under said viaduct and, leaving the river, proceeds southwest along North Spring Street to the northern end of Alameda Street and thence southerly along Alameda Street at grade, crossing many important streets, to the Southern Pacific Company's Arcade passenger station just west of Alameda Street between Fourth and Sixth Streets; that the Southern Pacific Company's Sunset or El Paso route approaches the city of Los Angeles from the east and crosses the Los Angeles River along Alhambra Avenue and then turns south into Alameda Street at North Main Street, a short distance south of the north end of Alameda Street and proceeds thence southerly to the Arcade Station as do the trains from the north; and that south of said Arcade Station the Southern Pacific Company occupies Alameda Street at grade to the southerly boundary of the city with its line to San Pedro and Santa Ana" (R. 4).

b. Santa Fe.

With reference to the tracks of the Santa Fe, said Paragraph IV of the Petition alleges as follows:

"That the main line of The Atchison, Topeka and Santa Fe Railway Company, herein at times called the Santa Fe, from the east through Pasadena follows the Arroyo Seco and crosses from the east bank to the west bank of the Los Angeles River just north of said North Broadway Viaduct; that the line thence passes under said Via-

duct and proceeds thence southerly along the west bank of the river across Alhambra Avenue to said company's passenger station on the west bank of the river, just south of First Street; that an alternative route from San Bernardino joins the Los Angeles-San Diego line at Fullerton and enters the city from the southeast, crossing the river from the east bank to the west bank south of Butte Street and following thence north along the west bank of the river to the Santa Fe's said passenger station; and that a local line of the Santa Fe from Redondo and San Pedro joins said last mentioned line near Butte Street." (R. 4-5)

c. Salt Lake.

With reference to the tracks of the Salt Lake, said Paragraph IV of the Petition alleges as follows:

"That the main line of the Los Angeles and Salt Lake Railroad Company, herein at times called the Salt Lake, enters the city from the southeast through a point called Hobart Junction; that said line formerly proceeded up the east bank of the river to the Salt Lake's former passenger station located on the east bank of the river, south of First Street, but that subsequent to the abandonment by the Salt Lake of its said passenger station on or about November 1, 1924, the Salt Lake, as a temporary matter, operates its passenger trains from the east bank to the west bank of the river at or about Butte Street, thence west along said street to a connection with the tracks of the Southern Pacific along Alameda Street and thence north over and along said tracks at grade along Alameda Street to and into the Southern Pacific Company's said Arcade passenger depot; that one line of the Salt Lake continues from Butte Street north along the

east bank of the river, passes under said North Broadway Viaduct and follows thence up the Arroyo Seco to Pasadena; that a branch of said last mentioned line crosses the Arroyo Seco to the north and terminates at Glendale, a suburb approximately 5 miles north of the Arcade station; and that another local line of the Salt Lake from the south serves Long Beach and San Pedro and joins the main line between Hobart Junction and the river." (R. 5)

d. Volume and Direction of Passenger Traffic.

Turning now to the subject of the volume and direction of the passenger traffic into and out of the City of Los Angeles, said Paragraph IV of the Petition alleges as follows:

"That over their said lines of railroad the Southern Pacific, Santa Fe and Salt Lake transport into and out of the city of Los Angeles annually in excess of 2,250,000 passengers; that in the transportation of said passengers said carriers operate into and out of said city annually in excess of 12,000 arriving and an equivalent number of departing passenger trains.

"That the Southern Pacific's main line from the north, the Santa Fe's main line from the north and the Salt Lake's branch line to Pasadena all run under said North Broadway Viaduct at the entrance to the city from the north, the two former lines being located under said Viaduct along the west bank of the river and the latter line along the east bank; and that the point at which said tracks of said carriers run under said North Broadway Viaduct is located only approximately three-fourths of one mile distant northerly from the so-called Plaza Area as described in the

decisions of the Interstate Commerce Commission and the California Railroad Commission to which reference will hereinafter be made.

"That the predominating passenger traffic of said carriers in the city of Los Angeles is to and from the north and east; that 69 per cent of all scheduled main line passenger trains enter Los Angeles by routes north of said Plaza Area; that 42 out of the 78 main line scheduled passenger trains daily pass under said North Broadway Viaduct and 12 run along Alhambra Avenue; that only 24 of said trains, being less than one-third, enter the city from the south; and that 74 per cent, being nearly three-fourths, of all passengers use routes north of said Plaza Area." (R. 5-6)

2. ALAMEDA STREET.

Referring next to the admittedly very serious railroad grade crossing situation on and along Alameda Street, the principal north and south street through the industrial section of the City of Los Angeles, Paragraph V sets forth the situation as follows (omitting one allegation denied by the Commission on the ground that it has no information or belief):

"That Alameda Street is the principal north and south street through the industrial section of the city of Los Angeles; that an enormous volume of east and west traffic, street and interurban electric, vehicular and pedestrian, must cross daily said street and the double-track main line of the Southern Pacific located and operated thereon; that north of the Arcade depot said tracks along Alameda Street are operated by the Southern Pacific and that south of said depot they are operated not merely by the Southern Pacific

but also, since on or about November 1, 1924, by the Salt Lake in connection with its temporary use of said Arcade depot; that the presence along Alameda Street for practically its entire length of said double-track main line of the Southern Pacific at grade is a constant danger to life and limb and a serious inconvenience to an extremely heavy east and west railroad, vehicular and pedestrian traffic and that said situation is constantly becoming more aggravated.

"That not merely the Southern Pacific but also the Santa Fe and the Salt Lake have their duties and responsibilities in connection with said Alameda Street situation.

"That all persons coming to or going from the Santa Fe depot from or to points west of Alameda Street must cross the Southern Pacific tracks located and operated thereon and that the Santa Fe has its passenger depot so located that its passengers are obliged to go through said scene of danger in order to reach it.

"That the same situation would be equally applicable to the Salt Lake if that carrier should return to its passenger grounds on the east bank of the Los Angeles river and that at the present time the Salt Lake, by running its pasenger trains into and out of the Southern Pacific's Arcade station, under said temporary arrangement, along Alameda Street south of the Arcade station, has aggravated and is aggravating the condition along that part of Alameda Street." (R. 6-7)

3. EXISTING PASSENGER DEPOTS.

Paragraph VI of the petition next describes the existing passenger depot situation of the Salt Lake, the Santa Fe and the Southern Pacific in the City of

Los Angeles as follows (omitting the allegations denied by the Commission on the ground that it has no information or belief):

a. Salt Lake Passenger Depot.

"That the Salt Lake does not now own any passenger depot in the City of Los Angeles; that said carrier formerly owned and operated a passenger station on the east bank of the Los Angeles river, south of First Street; that the passenger station building at said location was a two-story frame building which was erected in 1891 at a cost of approximately $10,000.00; that said structure was inadequate to serve the needs of the traveling public and that its location was inconvenient and its access dangerous to the public; that in the year 1924 a fire fortuitously did some damage to the second story of the building, whereupon the Salt Lake was authorized by the Railroad Commission of California to run its trains into the Arcade depot of the Southern Pacific Company as a temporary matter; that in its said order (Decision No. 13,923, Vol. 25, Opinions and Orders, Railroad Commission of California, p. 281) the said Railroad Commission expressly provided that the Salt Lake should not use the granting of said application either by way of defense or argument on the ground of capital expenditure or on any other ground against any order, or in any proceeding then or thereafter pending before said Commission or any other Commission, court or public tribunal providing for or looking toward railroad or terminal unification in the city of Los Angeles; that the Salt Lake accepted said order of said Railroad Commission, began its operations into said Arcade depot on or about November 1, 1924 and has continuously subsequent to said date

operated its Los Angeles passenger trains into and out of said Arcade passenger depot; that in order to reach said Arcade depot, the Salt Lake operates all its passenger trains at grade on and along Alameda Street from Butte Street on the south to said Arcade depot on the north, across many important public streets and that thereby the inconvenience and danger to traffic, both vehicular and pedestrian, across said portion of Alameda Street has been greatly accentuated." (R. 7-8)

b. **Santa Fe Passenger Depot.**

"That the Santa Fe's passenger station in the city of Los Angeles is located along the west bank of the Los Angeles river, south of First Street, and that the depot is a small brick building which was erected in 1893; that the present structure is inadequate and does not meet the reasonable requirements of the traveling public; that substantially all members of the public who have occasion to use the Santa Fe's passenger depot can do so only by crossing Alameda Street and the main line tracks of the Southern Pacific located thereon; and that the Santa Fe's said depot is located on a site which is inconvenient and difficult of access and dangerous to the public desiring to use said passenger depot." (R. 8)

c. **Southern Pacific Passenger Depot.**

"That the Southern Pacific's Arcade passenger depot in the city of Los Angeles was constructed by said carrier in 1915 under authority of an order of the Railroad Commission of California (Decision No. 1090, Vol. 3, Opinions and Orders, Railroad Commission of California, pp. 927-30) made on petition of said carrier; that as the result of public protests on the ground that the elimina-

tion of the Southern Pacific's railroad grade crossings on Alameda Street would be delayed or prevented by the construction of a passenger depot at said point, the Railroad Commission's order authorizing the demolition of the old Arcade passenger depot at said point and the erection of the present depot contained an express provision 'that the tearing down and abandonment of said old depot, and the taking up, relocating and placing of new trackage in connection with said new depot, or the approval of this commission therefor, shall never be used as a defense against the separation of grade crossings in the state of California'; that the public interest and the public safety urgently require the elimination from Alameda Street of all passenger operations and all freight operations of the Southern Pacific and the Salt Lake except only freight switching; that the waiting room of the Arcade depot is now overcrowded daily between the hours of 7 and 8 P. M. and that the building is rapidly becoming inadequate; and that changes and alterations in the building so as to make the same adequate for a number of years longer would cost approximately $500,000.00." (R. 8-9)

III.

HISTORICAL FACTS.

The pertinent historical facts, as set forth in the Petition for the Writ, may be very briefly summarized as follows:

1. CALIFORNIA RAILROAD COMMISSION'S FIRST DECISION.

On December 6, 1921, after an exhaustive investigation and voluminous testimony since 1916, the Railroad Commission of California rendered a decision

(Decision No. 9838, Volume 20, Opinions and Orders, Railroad Commission of California, page 937) ordering the Southern Pacific, the Santa Fe and the Salt Lake to procure sufficient land within a specified area in the Plaza District in Los Angeles for a union passenger station, to prepare and submit plans for such union station, passenger terminal and necessary facilities, and upon approval of the plans by the Commission, to proceed with the construction of such station and terminal (Paragraph VIII of Petition for Writ, R. 10-11).

2. CALIFORNIA SUPREME COURT'S DECISION.

The carriers thereupon took the Railroad Commission's said decision and order to the Supreme Court of California by writs of review. In a case entitled *Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of California,* 190 Cal. 214, the Supreme Court of California on December 19, 1922 annulled the Railroad Commission's said order on the ground that jurisdiction over the union passenger terminal situation in Los Angeles had, by the Transportation Act of 1920, become vested solely and exclusively in the Interstate Commerce Commission (Paragraph IX of Petition for Writ, R. 11-12).

3. COMPLAINT OF CITY OF LOS ANGELES BEFORE INTERSTATE COMMERCE COMMISSION.

The City of Los Angeles, thereupon, in March 1923, filed with the Interstate Commerce Commission its

formal complaint in Docket No. 14,778, asking the Interstate Commerce Commission to make its *order directing said carriers,* among other matters, *to construct and thereafter operate and use a union passenger depot and appurtenances on the site in the Plaza District in Los Angeles* theretofore specified by the Railroad Commission of California (Paragraph X of Petition for Writ, R. 12-13).

4. UNITED STATES SUPREME COURT'S DECISION.

Thereafter, on April 7, 1924, this Court made its decision in a proceeding entitled *Railroad Commission of California v. Southern Pacific Company,* 264 U. S. 331, being a petition by the Railroad Commission of California for a review of said adverse decision of the Supreme Court of California (190 Cal. 214). This Court, in its said decision, affirmed the said judgment of the Supreme Court of California and held that it would be necessary for the Interstate Commerce Commission to make certain *findings of fact* and to issue certain *certificates* preliminary to the issuance of an *order* for the construction and operation of the proposed union passenger station.

This Court also stated that it had been advised by statements at the bar that after the California Supreme Court handed down its decision, the City of Los Angeles filed a petition with the Interstate Commerce Commission, asking for an *order* to provide, maintain and use a union station, that a hearing followed, and that,

pending the decision of this Court, the matter before the Interstate Commerce Commission was being held under consideration. This Court then said:

> *"For the reasons given, we think that the course taken by the City of Los Angeles was the correct one."*
>
> (Paragraph XI of Petition for Writ, R. 13-14)
>
> 264 U. S. 331, 348.

5. INTERSTATE COMMERCE COMMISSION'S FIRST DECISION.

Thereafter, after taking further evidence in said Docket No. 14,778, the Interstate Commerce Commission, on July 6, 1925, rendered its first decision in said Docket (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421). The Commission, in its said decision, made all necessary *findings of fact* but held that it did not have jurisdiction to make the final *order* requested by the City for the construction of a union passenger depot. In this connection, the Commission said (p. 430):

> "We will give no consideration to matters shown of record for the purpose of determining whether we should issue an order *requiring* the construction and use of a union station by any of the defendants." (Italics by the Commission.)

The Commission held that under the existing circumstances it would issue no *certificates* or *orders* at the time, but would retain jurisdiction of said Docket No. 14,778, pending further possible action by the

Railroad Commission of California (Paragraph XII of Petition for Writ, R. 14-17).

(NOTE: For the 6 numbered *findings of fact* made by the Interstate Commerce Commission in this first decision, see the Note at the end of this Section of this brief and Appendix No. 3.)

6. CALIFORNIA RAILROAD COMMISSION'S SECOND DECISION.

The Railroad Commission of California thereupon reopened the matters pending before it for further consideration and after receiving voluminous additional testimony rendered a further decision on July 8, 1927 (Decision No. 18,593, Volume 30, Opinions and Orders, Railroad Commission of California, page 151). In its said decision, the Railroad Commission made findings of fact substantially identical with the 6 numbered findings of fact theretofore made by the Interstate Commerce Commission and added 4 further findings.

The California Commission thereupon made its order requiring the Southern Pacific, the Santa Fe and the Salt Lake to construct a union passenger station within said Plaza Area at a gross cost of approximately $10,000,000.00 and in substantial compliance with the plan outlined in the Railroad Commission's Exhibit No. 4 B (Paragraph XIII of Petition for Writ, R. 17-19).

(NOTES: 1. For the 4 additional findings of fact made by the California Railroad Commission in this decision, please see the Note at the end of this Section of this brief and Appendix No. 3. The Interstate Commerce Com-

mission, in its subsequent decision, found that these additional findings of fact of the California Railroad Commission "find sufficient support in the record" (142 I. C. C. 489, 496).

2. Said figure of $10,000,000.00, found by the Railroad Commission of California, is the *gross* cost of the new union passenger station and appurtenances. In its first decision of July 6, 1925, the Interstate Commerce Commission found that when due allowance was made for lands now used by the carriers in connection with their present passenger station facilities, which lands would be released for other uses if the Plaza plan were carried out, the *net* new money cost would be reduced to approximately $3,500,000.00 (100 I. C. C. 421, 457).

7. INTERSTATE COMMERCE COMMISSION'S SECOND DECISION.

The City of Los Angeles thereupon filed with the Interstate Commerce Commission in said Docket No. 14,778 its petition dated July 25, 1927 (Exhibit D to Petition for Writ, R. 115-128) advising said Commission, among other matters, of the most recent action taken by the Railroad Commission of California and asking the Interstate Commerce Commission now to issue its *certificates* in accordance with its *findings* in its said decision of July 6, 1925 (100 I. C. C. 421) and also to make its *order requiring* the Southern Pacific, the Santa Fe and the Salt Lake to construct and thereafter maintain a union passenger station and appurtenances within that portion of the Plaza District in the City of Los Angeles which had been specified by the California Railroad Commission and to acquire such land, if any, as might be necessary for said purpose, at a total cost of approximately

$10,000,000.00 in substantial compliance with the plan identified as California Railroad Commission's Exhibit No. 4 B (Paragraph XIV of Petition for Writ, R. 19-20; also see plan opposite R. 128).

After further briefs and oral argument, the Interstate Commerce Commission, on May 8, 1928, rendered its second decision in said Docket No. 14,778 (142 I. C. C. 489). The Commission, in its said second decision, took action as follows:

(1) Reaffirmed the *findings of fact* made by it in its first decision (R. 138; 142 I. C. C. 489, 496);

(2) Adhered to the *finding* in its first decision that the union depot plan as submitted by the City of Los Angeles is *"in the public interest"* (R. 89; 100 I. C. C. 421, 461; R. 138; 142 I. C. C. 489, 496; R. 153);

(3) Found that the four additional *findings* of the California Railroad Commission numbered 7 to 10, inclusive, "find sufficient support in the record" (R. 138; 142 I. C. C. 489, 496, 502-3); and

(4) Issued all *certificates* necessary under this Court's decision in the *Los Angeles Union Station Case,* 264 U. S. 331 (R. 146-7).

In its *majority* opinion, however, the Commission again refused to take the final step of *ordering* the carriers to construct and operate a union passenger depot as prayed for by the City of Los Angeles and to consider the evidence bearing on the propriety of making said order. The Commission again based its refusal to make such order or consider the evidence

bearing thereon on its view that, as a matter of law, it does not have the jurisdiction to make such order.

A separate opinion, filed by Commissioner Eastman and concurred in by Commissioners Lewis and McManamy held that the order requested by the City of Los Angeles should have been issued (142 I. C. C. 489, 498-502). (Paragraph XV of Petition for Writ, R. 20-2.)

(NOTE: For the *certificates* issued by the Interstate Commerce Commission in this decision, see the Note at the end of this Section of this brief and Appendix No. 4.)

8. PETITION OF CITY OF LOS ANGELES FOR WRIT OF MANDAMUS.

Thereafter, on July 12, 1928, the City of Los Angeles filed its Petition for the Writ herein.

(NOTE: *Findings of Fact and Certificates.*

For convenience of reference, the Court's attention is invited to the following passages in the Petition for the Writ where the Interstate Commerce Commission's *findings* and *certificates* may be found:

The 6 numbered *findings of fact* made by the Interstate Commerce Commission in its first decision and later reaffirmed in its second decision may be found in 100 I. C. C. 421, 459-60 and are quoted in Paragraph XII of the Petition for the Writ herein (R. 15-16).

The 4 additional *findings of fact* which were made by the Railroad Commission of California and as to which the Interstate Commerce Commission, in its second decision, said that "they find sufficient support in the record", may be found in Volume 30, Opinions and Orders, Railroad Commission of California, pages 151, 161, and are quoted in Paragraph XIII of the Petition for the Writ herein (R. 18).

The entire 10 *findings of fact* are attached as Appendix No. 1 to the Interstate Commerce Commission's second decision of May 8, 1928 (142 I. C. C. 489, 502-3) and are quoted at the end of Exhibit E attached to the Petition for the Writ herein (R. 147-9).

The Commission's *finding* or conclusion that the plan for a union passenger depot submitted by the City of Los Angeles is "in the public interest" may be found in the first decision (100 I. C. C. 421, 461; R. 89). The Commission's adherence thereto in its second decision will be found at 142 I. C. C. 489, 496 (R. 138). The Commission's answer or return to the petition for the writ of mandamus herein emphasizes, in quotation marks, the fact that this finding was made by the Commission (R. 153). The finding is also quoted on page 13 of the Commission's brief on file herein.

The *certificates* issued by the Interstate Commerce Commission in its second decision of May 8, 1928 (in accordance with the decision of this Court in *Railroad Commission of California v. Southern Pacific Company*, 264 U. S. 331) are attached at the end of the decision in 142 I. C. C. 489 and are reproduced at the end of Exhibit E attached to the Petition for the Writ herein (R. 146-7).

The Court is further referred to the following Appendices to this brief:

Appendix No. 3—Findings of Fact of Interstate Commerce Commission.

Appendix No. 4—Certificates issued by Interstate Commerce Commission.)

The Law.

I.

MANDAMUS THE PROPER REMEDY.

The petition herein was filed under the provisions of Sections 1273-82 of the Code of the District of Columbia, relating to the subject of Mandamus.

That mandamus is the proper remedy in this case appears clearly from a number of decisions of this Court in which writs of mandamus were asked against the Interstate Commerce Commission.

In *Interstate Commerce Commission v. United States ex rel. Humboldt Steamship Company,* 37 App. D. C. 266, 224 U. S. 474, the relator, Humboldt Steamship Company, filed in the Supreme Court of the District of Columbia a petition for a writ of mandamus directing the Interstate Commerce Commission to take jurisdiction over certain common carriers in the territory of Alaska. The Humboldt Steamship Company had filed a complaint before the Commission against certain railway and steamship companies doing business in Alaska to require them to file their tariffs and to establish through routes and joint rates and to afford reasonable, proper and equal facilities for the interchange of traffic between their respective lines.

After a hearing, the Commission decided that it was without jurisdiction to make the order and dismissed the complaint.

The petition for writ of mandamus was then filed with the Supreme Court of the District, which Court dismissed the petition.

On appeal, the Court of Appeals reversed the decision of the lower Court and held that the writ should have issued (37 App. D. C. 266). This Court, in a decision by Mr. Justice McKenna, affirmed the decision of the Court of Appeals and held that if the Interstate Commerce Commission refuses to act and denies its power, from a misunderstanding of the law, it can be required, by mandamus, to proceed to the merits of the controversy.

The striking analogy between that case and the present case is quite obvious.

In *United States of America ex rel. Louisville Cement Company v. Interstate Commerce Commission,* 42 App. D. C. 514, 246 U. S. 638, this Court reversed the Supreme Court of the District and the Court of Appeals in a mandamus proceeding against the Interstate Commerce Commission and held that a writ should issue commanding the Interstate Commerce Commission to proceed to the disposition of a shipper's claim for overcharges under the construction placed upon the Commission's jurisdiction by this Court. The Commission had held that it was without jurisdiction to proceed.

At pages 642-3, this Court said:

> "That the Supreme Court of the District of Columbia, in a proper case, has power to direct

the Commission by mandamus to entertain and proceed to adjudicate a cause which it has erroneously declared to be not within its jurisdiction, is decided in *Interstate Commerce Commission v. United States,* 224 U. S. 474." (The Humboldt Steamship Company case.)

To the same effect, see also

United States ex rel. Kansas City Southern Ry. Co. v. Interstate Commerce Commission, 252 U. S. 178.

II.

LEGAL SITUATION PRIOR TO TRANSPORTATION ACT, 1920.

Prior to the enactment of the Transportation Act, 1920, it seems quite clear that the Railroad Commission of California had full power and authority to make an order for the construction, maintenance and operation by the Southern Pacific, the Santa Fe and the Salt Lake of a union passenger station in the Plaza Area in Los Angeles.

Constitution of California, Article XII, Section 22;

Constitution of California, Article XII, Section 23;

Public Utilities Act of California (Stats. 1915, p. 115, as amended), Section 13(b), Section 22(a), Section 30, Section 31 and Section 36).

In *Civic Center Association v. Railroad Commission of California,* 175 Cal. 441, the Supreme Court of Cal-

ifornia issued its mandate directing the Railroad Commission of California to take jurisdiction over the complaints which had been filed with it involving not merely the railroad grade crossing situation in Los Angeles but also the union station issue. The proceedings subsequently taken by the Railroad Commission of California were taken in pursuance of said writ.

In *Atchison, Topeka & Santa Fe Railway Company v. Railroad Commission of California,* 190 Cal. 214, 226-7, the Supreme Court of California decided that by reason of the enactment of the Transportation Act, 1920, the power and authority of the California Railroad Commission to make an order directing the Southern Pacific, the Santa Fe and the Salt Lake to construct and operate a union passenger station in the City of Los Angeles had been *"divested"* from the Railroad Commission and had become *"vested"* in the Interstate Commerce Commission. The use of the term "divested" shows clearly that it was the opinion of the Supreme Court of California that the California Commission, prior to the enactment of the Transportation Act, 1920, had been vested with authority to require the carriers to construct a union passenger station, but the court concluded that Congress, in enacting the Transportation Act, 1920, had divested this jurisdiction from the California Commission and had vested it in the Interstate Commerce Commission.

Hence, it would seem to be quite clear that if it had not been for the enactment of the Transportation Act,

1920, the Railroad Commission of California would have had complete jurisdiction to make the order which it actually did make directing said three carriers to construct and operate said union passenger station in the City of Los Angeles.

However, the Supreme Court of California decided that this power had become vested in the Interstate Commerce Commission and the City of Los Angeles accepted said decision and in March, 1923, filed its complaint in said Docket No. 14,778, with the Interstate Commerce Commission asking that Commission to make its order requiring said carriers to construct and operate said union passenger station.

(NOTE: Prior to the effective date of the Transportation Act, 1920, it had been uniformly decided by state courts that where the authority has been conferred the states might lawfully require the construction and operation of union passenger stations whenever, on the facts, such order would be reasonable.

Railroad Commission of Alabama v. Northern Alabama Railway Co., 182 Ala. 357, 69 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern R. Co., 183 Ala. 354, 64 So. 13;

Mayor and Aldermen of Worcester v. Norwich and Worcester Railroad Company, 109 Mass. 103;

Dewey v. Atlantic Coast Line et al., 142 N. C. 392, 55 S. E. 292;

Missouri O. & G. Railway Co. v. State, 29 Okl. 640, 119 Pac. 117;

State v. St. Louis Southwestern Railway Co. (Tex. Civ. App.), 165 S. W. 491;

Gulf, Colorado & Santa Fe Railway Company, et al. v. State (Tex. Civ. App.), 167 S. W. 192.

State v. St. Louis Southwestern Railway Co. et al. (Tex. Civ. App.), 199 S. W. 829.)

III.

TRANSPORTATION ACT, 1920— NEW NATIONAL RAILROAD POLICY.

The new national railroad policy established by Congress in the Transportation Act of 1920 has been reviewed by this Court in a number of decisions.

In *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy Railroad Company,* 257 U. S. 563, decided on February 27, 1922, the Interstate Commerce Commission had ordered that undue discrimination against Wisconsin interstate passengers should be removed by increases in all intrastate passenger fares and excess baggage charges. In upholding the Commission's power and authority, this Court reviewed a number of sections of the Interstate Commerce Act, as amended, not directly dealing with the subject of discrimination, in order "to show the scope of the congressional purpose in the act". In so doing, this Court referred to the Commission's newly granted power over

> "1st, the issuing of future railroad securities by the interstate carriers; 2nd, the regulation of their car supply and distribution and the *joint use of terminals;* and 3rd, their construction of new lines, and their abandonment of old lines." (p. 585.)

This Court then held that where the "general words" used in connection with the subject of discrimination

> "aptly include a kind of discrimination against interstate commerce which the operation of the new

act for the first time makes important, and which would seriously obstruct its chief purpose, we cannot ignore their necessary effect." (p. 587.)

This Court further held:

"Commerce is a unit and does not regard state lines, and while, under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that the supreme authority, the nation, cannot exercise complete, effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority or a violation of the proviso." (p. 588.)

In *Akron, Canton & Youngstown Railway Company v. United States,* 261 U. S. 184, decided on February 19, 1923, also known as the "New England Divisions Case," this Court sustained the provisions of the Transportation Act of 1920, authorizing the Interstate Commerce Commission to prescribe the divisions of joint rates between connecting carriers and directing that in so doing the Commission shall give consideration to the importance to the public of the transportation service rendered by the several carriers and to the revenues needed by the individual carriers to enable them to pay a fair return on their railway property.

This Court referred to the "new railroad policy" and reviewed the provisions of the Transportation Act conferring new and enlarged powers upon the Interstate Commerce Commission (pp. 189-190).

This Court affirmed the "two new devices" of group systems of rate making and the divisions of joint rates in the public interest (p. 191) and significantly held:

> "Obviously, Congress intended that a method should be pursued by which the task, which it imposed upon the commission, could be performed." (p. 197.)

In *Dayton-Goose Creek Ry. Co. v. United States,* 263 U. S. 456, decided on January 7, 1924, involving the recapture of excess earnings under Section 15a of the Interstate Commerce Act, this Court said:

> "To achieve this great purpose (to allow the railroads to earn sufficient revenues to keep their property in proper efficiency) it (the Transportation Act) puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates and by fixing adequate rates for interstate commerce and, in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carrier engaged." (p. 478.)

In the *Los Angeles Union Station Case,* 264 U. S. 331, 341-2, decided on April 7, 1924, this Court quoted with approval its above language from the *Dayton-Goose Creek Railway Company* decision bearing on the new national railroad policy.

In *United States v. New York Central Railroad Company,* 272 U. S. 457, decided on November 22, 1926, in which case the Interstate Commerce Commission had made an order directing that transportation service be provided between the terminal of the Erie Canal in Buffalo and the line of railroad of New York Central Railroad Company, this Court held that the jurisdiction of the Interstate Commerce Commission over the carriers at a point where interchange of traffic is sought and the facilities by which transportation is carried on extends to *"the entire current of commerce"* flowing through the terminal, although such commerce is, in part, intrastate. At page 464, this Court said:

> "Where as here interstate and intrastate transactions are interwoven, the regulation of the latter is so incidental to and inseparable from the regulation of the former as properly to be deemed included in the authority over interstate commerce conferred by statute." (Citing numerous decisions.)

There would seem to be a striking analogy between the situation in the case last above referred to and the case of a union passenger depot of three great interstate railroads in the largest city west of the Mississippi River where the current of passenger traffic flowing through the union passenger depot would be very largely interstate, as pointed out by this Court in its decision in the *Los Angeles Union Station Case,* supra.

In a subsequent portion of this brief, we shall devote ourselves specifically to the new national railroad policy with reference to *union passenger stations,* resulting from changes in the law made effective by the Transportation Act, 1920.

IV.

LOS ANGELES UNION STATION CASE— U. S. SUPREME COURT.

In the *Los Angeles Union Station Case,* 264 U. S. 331, this Court affirmed the decision of the Supreme Court of California which had held that full power and authority over the construction of the union passenger station in Los Angeles is now vested in the Interstate Commerce Commission.

We consider the following matters, among others, in connection with said decision to be significant:

1—THE ISSUE, AS UNDERSTOOD BY THIS COURT.

What did this Court understand to be the issue on which it affirmed the decision of the Supreme Court of California?

Chief Justice Taft stated that issue in the very first paragraph of the decision as follows (p. 338):

> "The question in this case is whether the State Railway Commission of California has power to require the Southern Pacific Company, the Atchison, Topeka and Santa Fe Railway Company and

> the Los Angeles and Salt Lake Railway Company to build an interstate union depot in the city of Los Angeles."

Continuing, the Court said (p. 338):

> "The Supreme Court of the State held that the order was beyond the power of the State Railway Commission, because the subject matter was committed to the Interstate Commerce Commission by the Transportation Act of 1920."

On that issue, the decision of the Supreme Court of California was affirmed.

2—NEW NATIONAL RAILROAD POLICY.

At the threshold of its analysis of the arguments of counsel, the Court (p. 341) quotes from *Dayton-Goose Creek Railway Company v. United States,* 263 U. S. 456, to the effect that it is the purpose of the Transportation Act, 1920, to put "the railroad systems of the country more completely than ever under the fostering guardianship and control of the Interstate Commerce Commission."

3—ANALYSIS OF PROVISIONS OF TRANSPORTATION ACT.

The Court then refers to various provisions of the Transportation Act, including Paragraphs 3 and 4 of Section 3 of the Act, as amended (on both of which Paragraphs we rely) and says (p. 343):

> "It is obvious from the foregoing that Congress intended to place under the superintending and fostering direction of the Interstate Commerce

Commission *all increased facilities* in the matter of distribution of cars and equipment and *in joint terminals, in the exchange of interstate traffic and passengers between railways so as to make it prompt and continuous.*"

4—POWER AND DUTY OF INTERSTATE COMMERCE COMMISSION TO MAKE OUT OF PASSENGER AND FREIGHT STATION OF ONE INTERSTATE CARRIER A UNION STATION OR DEPOT.

Attention is then directed to the fact that the Transportation Act provides not only for "*temporary* expropriation of terminals and main track of one railway to the common use of one or more other railways in an *emergency*" but it (the Transportation Act)

> "*also contemplates the compulsory sharing of one company's terminals with one or more companies as a permanent arrangement*" (p. 343).

The Court then comments on the effect of the foregoing provisions as a "drastic limitation of a carrier's control and use of its own property in order to secure convenience and dispatch for the whole shipping and travelling public in interstate commerce" and expresses the following highly important conclusion on this subject (p. 344):

> "*It* (the Transportation Act) *gives to the Interstate Commerce Commission the power and duty where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot.*"

As will be observed, the Commission has not merely the *power* but also the *duty* where the public interest requires, to order the establishment of a union station or depot under the circumstances stated.

5—NEWLY BUILT DEPOTS ON LAND OF THIRD PARTIES.

The Court then refers to an argument made by counsel for the Railroad Commission of California to the effect that the Interstate Commerce Commission's authority over union passenger depots would not extend to a new station to be constructed on the property of others than carriers and comments thereon as follows (p. 344):

> "This would be giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers limited to the terminals of one carrier, and would leave the larger and more important union stations of interstate carriers to the control of state commissions."

That would, indeed, be a ridiculous conclusion and one which apparently appealed to the Court's sense of humor. The result would be that in the very cases in which the magnitude of the undertaking and of the interests involved would seem most clearly to require jurisdiction on the part of the Interstate Commerce Commission, that Commission would be helpless, while in small cases in which an existing passenger station of one railroad could be converted into a union passenger station without requiring any additional land, the Federal Commission would have the author-

ity. Such a conclusion would be contrary to the entire spirit of the Transportation Act and to the practical necessities of the situation.

6—PARAGRAPHS 18-21 OF SECTION 1.

However, the Court did not find it necessary to pursue that subject, for the reason that it found that "means of control" over the installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission by Paragraphs 18 to 21, inclusive of Section 1 of the Act, as amended, referring to "extensions" and "abandonments" of lines of railroad (pp. 344-5).

The Court found that the "extensions" and "abandonments" incidental to the construction of a union passenger station in the Plaza Area in Los Angeles fall within the classes of "extensions" and "abandonments" over which the Interstate Commerce Commission has jurisdiction and concluded in the next to the last paragraph of its decision as follows (p. 348):

> "Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of Section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission."

7—KIND OF LOCAL UNION STATION OVER WHICH STATE COMMISSION MIGHT RETAIN JURISDICTION.

At page 345, the Court expresses its view with reference to the kind of local union station or terminal

over which a state commission might retain jurisdiction, as follows:

> "One might, too, readily conceive of a railroad crossing or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of *merely local union stations* or terminals *without extensions of main tracks and substantial capital outlay* should be regarded as an *ordinary exercise of the police power of the state* for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers."

But the Court hastens to point out that such a purely local situation would be far different from that presented in the Los Angeles case and in this connection says (p. 346):

> "But there is a great difference between such relocation of tracks or *local union stations and what is proposed here.* The differences are more than that of mere degree, they and their consequences are so marked as to constitute a *change in kind.*"

Such a situation, continues the Court, requires a "certificate of the Interstate Commerce Commission" (p. 346).

8—PROVISO IN PARAGRAPH 17 OF SECTION 1.

At page 346, the Court refers to the proviso in Paragraph 17 of Section 1 of the Act, as amended, reserving to the states the power "to require just and reasonable freight and passenger service for *intra-*

state business" except in so far as such requirement may be "inconsistent with any lawful order of the Commission made under the provisions of this Act."

It will be noted that the power reserved is as to *intrastate* business and that even as to that business the power must yield to an inconsistent lawful order of the Interstate Commerce Commission.

The Court refers to the proposed Los Angeles union passenger station as an "*interstate* union depot" (p. 338) to be constructed by "three great interstate railway systems in the largest city of our Western Coast" (p. 342) and it is quite evident to us that the Court was of the opinion that authority to direct the construction of such an interstate union passenger station had not been preserved to the states under said proviso but had become vested in the Interstate Commerce Commission.

9—CERTIFICATES TO BE ISSUED BY INTERSTATE COMMERCE COMMISSION.

This Court specified quite clearly the certificates to be issued by the Interstate Commerce Commission as follows:

> (a) Certificates that the public convenience, present or future, require the extensions and abandonments incidental to the Los Angeles union depot project (p. 344); and
>
> (b) A certificate (or finding) that the expense involved will not impair the ability of the carriers to perform their duty to the public (p. 347).

Such certificates were, in fact, issued by the Commission in its second decision (142 I. C. C. 489; Exhibit E to Petition for Writ, R. 146-7; Appendix No. 4 to this brief).

10—THIS COURT'S CONCLUSION THAT COURSE TAKEN BY CITY OF LOS ANGELES IN FILING ITS FORMAL COMPLAINT WITH INTERSTATE COMMERCE COMMISSION WAS THE CORRECT ONE.

In the concluding paragraphs of its decision, this Court said (pp. 347-8):

> "We were advised by statements at the bar that after the California Supreme Court handed down its decision in this case, the city of Los Angeles filed a petition with the Interstate Commerce Commission, asking *for an order to provide, maintain and use a union station,* that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.
>
> "For the reasons given, *we think that the course taken by the city of Los Angeles was the correct one.*"

It thus appears that this Court knew exactly the nature and character of the relief which the City of Los Angeles was asking in its case before the Interstate Commerce Commission, namely, *an order requiring the carriers to provide, maintain and use a union station.*

Clearly understanding the situation, the Court said

> *"that the course taken by the city of Los Angeles was the correct one."*

We respectfully submit that this Court *decided* the issue of the Interstate Commerce Commission's jurisdiction on the precise facts here under consideration and that under that decision the Interstate Commerce Commission has full authority to grant the relief requested by the City of Los Angeles.

This was also the view of the Court of Appeals of the District of Columbia. In the concluding paragraph of its decision, that Court said (R. 170):

> "The procedure adopted by the City of Los Angeles in applying to the Interstate Commerce Commission for an order requiring the carriers to establish the union station in question was approved in the concluding words of the opinion in the Los Angeles Case, where the court said: 'We were advised by statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station; that a hearing followed and that, pending the decision in this court, the matter is held under consideration. For the reasons given, we think the course taken by the City of Los Angeles was the correct one.'"

(NOTE: In a subsequent portion of this brief, we shall address ourselves to the argument of counsel for the Interstate Commerce Commission that this Court, in its decision in the *Los Angeles Union Station Case,* hobbled the Interstate Commerce Commission by deciding that its only power in the premises is merely an "indirect and restrictive" power under which the Commission can simply sit by and *prevent* the consummation of a union depot plan which it may not consider to be in the public interest. Under this view, the Commission could do

nothing constructive in such matters. The Commission would simply have a veto power.

As we shall hereinafter show, we believe that this view is distinctly opposed to the New National Railroad Policy, fails to give effect to specific provisions of the Interstate Commerce Act as amended by the Transportation Act, 1920, and results from a failure to give effect to this Court's decision in the *Los Angeles Union Station Case.*)

V.

INTERSTATE COMMERCE COMMISSION HAS JURISDICTION TO REQUIRE CONSTRUCTION AND OPERATION OF THE UNION PASSENGER STATION IN LOS ANGELES.

1. ACTS INVOLVED IN CONSTRUCTION AND OPERATION OF UNION PASSENGER STATION AT PLAZA SITE IN LOS ANGELES.

The construction and operation of a union passenger terminal on the proposed site in the vicinity of the Plaza in Los Angeles would involve, among others, the following acts:

(a) *Extension* of existing main line railroad tracks to the site of the proposed new union passenger depot;

(b) *Abandonment* of certain existing passenger station facilities and also of the use by the Southern Pacific Company and the Salt Lake of the Southern Pacific's tracks on and along Alameda Street except only for industrial switching;

(c) *Joint use* of certain existing main line railroad tracks, for the purpose of securing access to and egress from the site; and

(d) *Selection* of the *site* and the *construction* of the *depot* thereon.

In the *Los Angeles Union Station Case,* 264 U. S. 331, this Court pointed out that an order for the construction and operation of a union passenger station in the Plaza Area in Los Angeles would necessarily involve *extensions, abandonments* and *joint users* of railroad properties falling within classes (a), (b) and (c) above specified. At page 340, the Court pointed out that such order would require the joint purchase of additional land for the location of the union passenger station, the abandonment of existing passenger depots, the abandonment, except for industrial switching, of the use of the Southern Pacific's tracks on Alameda Street, the joint use by the Southern Pacific of main tracks on the river bank with either the Salt Lake or the Santa Fe and the extension of main line tracks to the site of the proposed union passenger station.

The Court held that the Interstate Commerce Commission has jurisdiction over such *extensions, abandonments* and *joint users* and must issue the findings and certificates prescribed by the Interstate Commerce Act, as amended, before an *order requiring* the construction of the union passenger depot is made.

The Interstate Commerce Commission acted in accordance with said decision of this Court and issued all the necessary *findings* and *certificates.* As to these

three classes of acts, there is no issue here between the Interstate Commerce Commission and the City of Los Angeles.

What is there left? Only the selection of the site for the union passenger depot and the construction of the depot thereon.

The power to direct the construction of a union passenger depot has always been held to carry with it as a necessary incident thereto the power to specify the site thereof.

Railroad Commission of Alabama v. Alabama Great Southern Ry. Co., 185 Ala. 354, 64 So. 13, 22;

State v. St. Louis Southwestern Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 498;

Gulf, Colorado & Santa Fe Ry. v. State (Tex. Civ. App.), 167 S. W. 192, 195.

Hence the question at issue resolves itself into whether the Interstate Commerce Commission has the power to *require* the carriers to construct and operate a union passenger station on the site heretofore specified in the Interstate Commerce Commission's findings and certificates.

2. UNDER PARAGRAPH 3 OF SECTION 3 OF THE INTERSTATE COMMERCE ACT, AS AMENDED, THE INTERSTATE COMMERCE COMMISSION HAS JURISDICTION TO REQUIRE THE CONSTRUCTION AND OPERATION OF THE UNION PASSENGER STATION IN LOS ANGELES.

a. Paragraph 3 of Section 3 covers the case of a union passenger station.

Paragraph 3 of Section 3 of the Act, as amended, provides, in part, that carriers shall

> "afford all reasonable, proper and equal *facilities* for the interchange of traffic between their respective lines and *for the receiving, forwarding and delivering of passengers or property to and from their several lines and those connecting therewith.* * * *"

Referring to this paragraph of the Act, this Court, in the *Los Angeles Union Station Case,* 264 U. S. 331, 343, said:

> "By Section 405 (of the Transportation Act, 1920) amended Section 3 of the Interstate Commerce Act provides in its third paragraph that all carriers shall afford all reasonable facilities for the interchange of traffic between their respective lines and for forwarding and delivering passengers."

We invite attention to the fact that under Paragraph 3 of Section 3 it is the duty of carriers to afford all reasonable, proper and equal

> *"facilities * * * for the receiving, forwarding and delivering of passengers * * * to and from their several lines and those connecting therewith.* * * *"

It seems too clear for argument that for the receiving, forwarding and delivering of passengers to and from the several lines of various carriers, no *facility* is more reasonable, convenient and appropriate than *a union passenger station.*

That the word "facilities" includes depots and union depots has been decided by the Interstate Commerce Commission and the courts.

Hastings Commercial Club v. Chicago, M. & St. P. Ry. Co., 69 I. C. C. 489, decided July 10, 1922, was the first decision of the Interstate Commerce Commission construing Paragraph 3 of Section 3 of the Act as said paragraph had been amended by the Transportation Act, 1920. Commissioner Aitchison pointed out (p. 493) that in the matter of the use by one carrier of the terminal facilities of another carrier Congress had, by the Transportation Act, reversed the earlier policy and that the broader interest of the public in terminal properties had been recognized by the Transportation Act.

The Commission then defined the word "facilities" as used in Section 3 and said (p. 494):

> "The cases are numerous holding that *depots,* platforms, spur and side tracks, station grounds and elevators *are parts of railroad facilities. St. Louis & S. F. R. Co. v. Miller,* 31 Okl. 801; *State v. Missouri Pacific,* 29 Neb. 550; *Southern Pacific Company v. Railroad Commission,* 60 Ore. 406."

In *St. Louis & S. F. R. Co. v. Miller,* 31 Okl. 801, 123 Pac. 1047, cited by the Commission in the above

quotation, it was held that the word *"facilities"* as used in the Constitution of Oklahoma, includes a *railroad depot.*

In *Missouri, O. & G. Ry. Co. v. State,* 29 Okl. 640, 119 Pac. 117, the Corporation Commission of Oklahoma had made an order directing 3 railroad companies to construct and operate a union passenger depot in Durant, Oklahoma. The Constitution of Oklahoma provided that the Corporation Commission should have power to compel railroads to establish and maintain "such public service, *facilities* and conveniences as may be reasonable and just." The Supreme Court of Oklahoma held that the word "facilities" includes a *union passenger depot.*

The Interstate Commerce Commission itself, in its first decision of July 6, 1925, in the *Los Angeles Passenger Terminal Cases,* expressly assumed, and very properly so,

> *"that this provision* (i. e. Paragraph 3 of Section 3) *makes it the duty of carriers to maintain union-station facilities in a case where separate facilities would not be reasonable and proper."* (100 I. C. C. 421, 427.)

The same assumption underlies the Commission's second decision in the same case (142 I. C. C. 489).

If there had been any doubt on the question, that doubt would have been resolved conclusively by the decision of this Court in the *Los Angeles Union Depot Case,* 264 U. S. 331, in which case the Court decided that this same word "facilities" as used in the very

next paragraph of the Act (Paragraph 4 of Section 3) includes a "union station or depot". After referring to said Paragraph 4 and pointing out that it gives the Commission power to require the joint use of "terminal facilities" (p. 343), the Court said, relying on said words (p. 344):

> "It (said Paragraph 4) gives to the Interstate Commerce Commission the power and duty where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot."

The fact that the Court here found no difficulty in interpreting the word "facilities" so as to include a union passenger depot, is, in our opinion, a conclusive answer to the argument that if Congress had intended to give the Commission authority over the construction of passenger stations or union passenger stations Congress would have used those words specifically. This Court held that the specific use of these words is not necessary for the reason that Congress has used a broader term, namely, "facilities", which clearly includes not merely a passenger station of a single carrier, but also "a union station or depot".

We submit that there can be no reasonable doubt that the word "facilities" as used in Paragraph 3 of Section 3 of the Act includes a union passenger depot.

b. Under Paragraph 3 of Section 3, it is the duty of carriers, in a proper case, to construct and operate a union passenger station.

As we have already shown, the Commission itself took it for granted that under Paragraph 3 of Sec-

tion 3, it is the *duty* of carriers to maintain union station facilities in a case where separate facilities would not be reasonable and proper.

We have also shown that the Commission has issued all the necessary *findings* and *certificates* and has, in effect, twice decided the case in favor of the City on the *merits*.

Then why did not the Commission issue its affirmative *order* under Paragraph 3 of Section 3 *requiring* the construction of the union passenger depot as requested by the City?

To this question, the Commission has given two different answers, as follows:

1. In its first decision, the one of July 6, 1925, the Commission said, in effect, that while said Paragraph 3 of Section 3 prescribed certain *duties* to be performed by the carriers, including the duty in a proper case to construct a union passenger station, the Act has not given to the Commission *the power to enforce compliance by the carriers with the duties prescribed* by said paragraph; and

2. In its second decision, the one of May 8, 1928, the majority of the Commission said, in effect, that while perhaps it *does* have the power to enforce compliance with "little" duties specified in said Paragraph 3 of Section 3, it does not have the power to enforce compliance with "big" duties specified by the same paragraph.

We shall now consider each of these two positions, in turn.

c. The Interstate Commerce Commission has power to enforce compliance with the duties prescribed by Paragraph 3 of Section 3, including the duty to construct and operate a union passenger station.

The Commission's conclusion that it does not have power to compel compliance by the carriers with the *duties* prescribed by said Paragraph 3 of Section 3 was apparently based on *United States v. Pennsylvania R. R. Co.*, 242 U. S. 208. (See 100 I. C. C. 421, 427-8.) However, the Commission itself very fairly said of that case (p. 427):

> "The case arose before the Transportation Act, 1920, and does not involve any additions or changes in our jurisdiction made by that act."

The principal point in the case, being the matter on which the Commission quoted, was the proper construction to be given to the word "practices" in Section 15 of the Act. We have never claimed or suggested that our case comes under this word and have never in any way relied on it.

As the question now at issue has been decided under the Transportation Act, 1920, by this Court and other courts contrary to any possible adverse implication in *United States v. Pennsylvania R. R. Co.*, we shall not pause to give further consideration to the case.

We shall refer now, very briefly, to the decisions of the State Courts, the Interstate Commerce Commis-

sion itself and this Court under which we are convinced that the Interstate Commerce Commission has the power and authority, under said Paragraph 3 of Section 3 of the Act, to require the carriers, in a case such as ours, to construct and operate a union passenger station.

These decisions, we believe, show conclusively that the Interstate Commerce Commission has the *power* and authority to *compel* the *carriers,* in proper cases, to *perform* the *duties* specified in Paragraph 3 of Section 3 of the Act, including the duty to construct and maintain union passenger stations.

(1) State Decisions.

In *People ex rel. New York Central R. Co. v. Public Service Commission of New York,* 233 N. Y. 113, 119-121, 135 N. E. 195, 22 A. L. R. 1073, the Court of Appeals of New York decided that under the provisions of Paragraph 3 of Section 3 of the Act, as amended, the Interstate Commerce Commission has the exclusive authority to *require* carriers to construct connecting tracks for the interchange of traffic a portion of which is intrastate traffic.

On March 13, 1922, this Court (258 U. S. 621) denied a petition for a writ of *certiorari,* thus giving approval to the conclusion reached by the New York state courts on this question.

This decision, as well as the others to which we shall now refer, are directly at variance with the position taken by the Interstate Commerce Commission in its

first decision in the *Los Angeles Passenger Terminal Cases,* to the effect that the Commission does not have the power to require the performance by the carriers of the *duties* enumerated in said Paragraph 3 of Section 3 of the Act.

In *Lake Erie, A. & W. R. Co. v. Public Utilities Commission of Ohio,* 109 Ohio St. 103, 141 N. E. 847, the Supreme Court of Ohio reached the same conclusion on the subject of the Interstate Commerce Commission's authority to issue orders requiring the performance by carriers of the duties prescribed by said portion of Paragraph 3 of Section 3 of the Act.

The Supreme Court of California in *Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of California,* 190 Cal. 214, decided on December 19, 1922, held that the California Railroad Commission had lost its jurisdiction over the union passenger terminal situation in Los Angeles, and that by reason of the provisions of the Transportation Act of 1920, the jurisdiction to make an order requiring the construction and operation of the proposed union passenger station in Los Angeles is now vested exclusively in the Interstate Commerce Commission.

After reviewing various provisions of the Interstate Commerce Act, as amended, including not merely Paragraph 3 of Section 3, but also numerous other provisions of the Act, the court, at page 222, said:

> "The foregoing excerpts from among the many provisions of said amendatory act would seem to

fully justify the statement of Chief Justice Taft, above quoted from the Supreme Court of the United States, as to the radical departure effected by the said amendment to the Interstate Commerce Act in the direction of placing the entire control over the rates, properties, tracks, terminals and facilities of the railroads engaged in interstate commerce in and under the jurisdiction of the Interstate Commerce Commission."

After commenting at length on the case of *People ex rel. New York Central R. R. Co. v. Public Service Commission,* 233 N. Y. 113, 135 N. E. 195, and distinguishing the case of *Missouri etc. v. Larabee,* 211 U. S. 612, the court, at page 226, continued:

"It is clear from the foregoing that Congress has not only vested jurisdiction in the Interstate Commerce Commission over the question of the extension of terminal facilities, such as contemplated by the order of the Railroad Commission in the case at bar, but has also prohibited the railroads from making such improvements without the consent of the Interstate Commerce Commission. This being true, Congress has fully occupied the field of regulation of such matters and the power of the state commission has thereby been terminated."

Finally, the court concluded as follows (page 227):

"From the foregoing excerpts from the Act of Congress of 1920, amendatory of the Interstate Commerce Law, and from the authorities above cited, we arrive at the conclusion that full power and authority over the matter of union terminal depot facilities of the railroads which are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Inter-

> state Commerce Commission under the terms of said Amendatory Act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject sought by it to be exercised in the several proceedings before it and by the order presented for review herein."

This decision was affirmed by this Court in the *Los Angeles Union Station Case* (264 U. S. 331).

The *Selma Station Case, North Carolina Corporation Commission v. Southern Railway Co.,* 185 N. C. 435, 117 S. E. 563, was relied upon and quoted from by the Interstate Commerce Commission in its first decision of July 6, 1925 (100 I. C. C. 421, 428-9). In that case, the North Carolina Corporation Commission brought mandamus against two railroad companies to compel the joint construction and operation by them of a passenger station at Selma, North Carolina. However, the case would seem clearly to be non-applicable for each of the following reasons:

(1) The court apparently conceded the correctness of the decision of the Supreme Court of California in *Atchison, T. & S. F. Ry. Co. v. Railroad Commission of California,* 190 Cal. 214, but expressly distinguished that case from the Selma case on the ground that the depot at Selma was primarily to serve *local, state* traffic (pp. 573-4). At page 573, the court said:

> "This station at Selma is necessary for the convenience of the people who use the Southern Railway for transportation from *point to point within the state* * * *"

Again, at page 574, the court said:

> *"The particular station involved,* as we have shown, *so far as it concerns the Southern Railway, is one which interstate travelers scarcely use."*
>
> (NOTE: The situation at Selma, accordingly, was radically different from that at Los Angeles, with its enormous volume of interstate passenger traffic over the lines of the three said carriers.)

(2) The court distinguished between a *station* and *station facilities* at a point such as Selma, which is *not* a *terminal,* and *terminals* and *terminal* facilities as to which the court conceded that the power and authority has gone to the Interstate Commerce Commission (pp. 578-9).

(3) The court relied on the fact that no order had as yet been made by the Interstate Commerce Commission. (Proviso in Paragraph 17 of Section 1 of the Act.) This point, of course, loses its effect *when the Interstate Commerce Commission acts.*

(2) Decisions of Interstate Commerce Commission.

The Interstate Commerce Commission has itself twice decided that it has power to compel compliance by the carriers with certain duties prescribed by said Paragraph 3 of Section 3 of the Act.

The first of these decisions was *Pittsburgh & West Virginia Ry. Co. v. Lake Erie, A. & W. Railroad,* 81 I. C. C. 333. This was a case of the construction of a track connection between lines of two railroads for

the purpose of facilitating the interchange of traffic between the same. The Commission said (p. 334):

> "In our opinion under that portion of Paragraph 3 of Section 3 of the Act which requires that all carriers shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines *we have power* to deal with the issue here presented and *to make an affirmative order* in the premises if warranted by the record."

In other words, the Commission decided that it *has* the *authority* to *make* an *affirmative order requiring carriers to observe duties* specified in that portion of Paragraph 3 of Section 3 of the Act on which the City of Los Angeles relies.

The above decision was rendered *prior* to the Commission's first decision (July 6, 1925) in the *Los Angeles Passenger Terminal Cases* (100 I. C. C. 421).

Thereafter, on March 4, 1926, subsequent to the Commission's said first decision in the *Los Angeles Passenger Terminal Case,* but prior to its second decision therein, the Commission reached the same conclusion in *Chamber of Commerce, Breckenridge, Texas v. Wichita Falls, Ranger & Fort Worth R. Co.,* 109 I. C. C. 81. This was also a complaint under Paragraph 3 of Section 3 of the Act for the construction of connecting track between two lines of railroad.

At page 82, the Commission said:

> "The Ranger line and the Eastland, Wichita Falls & Gulf challenge our jurisdiction to grant

the relief prayed for. *Under* that portion of *paragraph* (3) *of section* 3 *of the act* which requires that all carriers shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, *we have the power to make an affirmative order* if warranted by the record. *Pittsburgh & West Virginia Ry. Co. v. L. E. A. & W. R. R.*, 81 I. C. C. 333."

The Interstate Commerce Commission has thus itself twice decided that it does have the power to *require* carriers to perform duties specified in Paragraph 3 of Section 3 of the Act.

(3) U. S. Supreme Court Decisions.

In addition to the *Los Angeles Union Station Case*, 264 U. S. 331, this Court has recently rendered another decision which has a direct bearing on the power and authority of the Interstate Commerce Commission to compel the carriers to comply with the duties specified by Paragraph 3 of Section 3 of the Act.

This decision was rendered subsequent to the Interstate Commerce Commission's first decision but prior to the Commission's second decision in the *Los Angeles Passenger Terminal Cases.* This decision is directly contrary to the view expressed by the Commission in its first decision to the effect that the Commission does not have power to require the carriers to comply with duties specified in said Paragraph 3 of Section 3 of the Act.

The case to which we refer is *Alabama & Vicksburg Railway Company v. Jackson & Eastern Railway*

Company, 271 U. S. 244, decided May 24, 1926. In this case, this Court said (p. 250):

> "In matters relating to the construction, equipment, adaptation and use of interstate railroad lines, with the exceptions specifically set forth in Paragraph 22, Congress has vested in the Commission the authority to find the facts and thereon to exercise the necessary judgment. The Commission's power under Paragraph 3 of Section 3 to *require* the establishment of connections between the main lines of carriers was asserted by it in *Pittsburgh & W. V. R. Co. v. Lake Erie, A. & W. R. Co.,* 81 Inters. Com. Rep. 333, a case decided after the withdrawal by the Jackson & Eastern of its application to the Commission for leave to make the junction at Curran's crossing, and in *Chamber of Commerce v. Wichita Falls, R. & Ft. W. R. Co.,* 109 Inters. Com. Rep. 81. That its jurisdiction is exclusive was held in *People ex rel. New York C. R. Co. v. Public Serv. Commission,* 233 N. Y. 113, 119-121, 22 A. L. R. 1073, 135 N. E. 195. Compare *Lake Erie, A. & W. R. Co. v. Public Utilities Commission,* 109 Ohio St. 103, 141 N. E. 847."

Whatever the implications in decisions prior to the Transportation Act, 1920, might have been, this Court here decided that the Interstate Commerce Commission has the power to *require* the carriers to comply with the *duties* specified by Paragraph 3 of Section 3 of the Act.

As the Commission had assumed in its first decision of July 6, 1925, that one of the duties thus specified is

> "the duty of carriers to maintain union station facilities in a case where separate facilities would not be reasonable and proper" (100 I. C. C. 421, 427),

and as the Commission had found in favor of the City on the *merits* of its case, the City looked forward quite confidently to receiving, finally, the order for which is prayed.

d. The Interstate Commerce Commission's authority to require the performance by carriers of duties prescribed by Paragraph 3 of Section 3 extends to "big duties" as well as to "little duties".

However, in its second decision of May 8, 1928, the Commission again held, in the *majority* opinion, that it does not have jurisdiction to issue this order.

The decision this time was not based on the proposition that the Commission does not have jurisdiction to compel compliance with the *duties* prescribed in Paragraph 3 of Section 3 of the Act. It may be assumed that the Commission yielded to the authority of the *Alabama & Vicksburg Railway Company* decision and for that reason did not restate or insist on its former point of view.

The decision on the jurisdictional question in the Commission's second decision was based on a different ground—namely, a distinction on the facts between a switch connection and a union passenger station. The following sentence is the only sentence which gives the reason for the opinion of the majority of the Commission in its second decision (Exh. E to Petition for Writ, R. 139):

> "The distinction between a simple switch connection such as was contemplated by the cases previously referred to, and the elaborate facilities sought to be required by us in the present case, is obvious." (142 I. C. C. 489, 497.)

That is all. That was the view of the majority of the Commission.

Three commissioners held that the Commission has the authority urged by the City and should issue the order requested by the City. We can not do better than to quote from the opinion of Commissioner Eastman, which was concurred in by Commissioners Lewis and McManamy (142 I. C. C. 489, 500):

> "However, since our previous decision in this case, we have ourselves decided in *Pittsburgh & West Virginia Ry. Co. v. L. E., A. & W. R. R.*, 81 I. C. C. 333, and in *Breckenridge Chamber of Commerce v. W. F., R. & F. W. R. R. Co.*, 109 I. C. C. 81, that we have the power to enforce by affirmative order the provisions of paragraph (3) of section 3, and the Supreme Court has referred with approval to these cases in *Alabama & Vicksburg Ry. Co. v. Jackson & Eastern Ry. Co.*, 271 U. S. 244. They (said decisions) related to the establishment of switch connections, and the majority here distinguish them by saying that the 'distinction between a simple switch connection such as was contemplated by cases previously referred to, and the elaborate facilities sought to, be required by us in the present case is obvious. The logic of this is not clear. In our previous decision we held, upon authority of the Supreme Court decision in the *Tank Car Case*, that power to enforce paragraph (3) of section 3 is in the courts rather than in us. It now appears that so far, at least, as that paragraph requires switch connections, we can enforce it. But if we can enforce it in one of its aspects, why not in all? There is nothing in the paragraph which distinguishes between *little duties* and *big duties*, or gives us power to enforce the one and not the other. Inasmuch as the Supreme Court has inti-

> mated that we can enforce paragraph (3) in one respect, it follows necessarily, it seems to me, that we can enforce it in all respects." (Exh. E to Petition for Writ, R. 143-4.)

In other words, the issue between the Commission and the City as to Paragraph 3 of Section 3 may be stated, in a nutshell, as follows:

The Commission concedes that our case comes within the language of Paragraph 3 of Section 3. The Commission now concedes also that it has the power to compel compliance with certain duties specified by Paragraph 3. The majority of the Commission, however, now draws a distinction between *big duties* and *little duties,* holding that the Commission can compel compliance with *little duties* under said paragraph but not with *big duties,* such as the duty to establish and maintain a union passenger station.

None of the decisions bearing on Paragraph 3 of Section 3 make or suggest this distinction.

Section 12 of the Act, in providing that

> "the Commission is hereby authorized and required to execute and enforce the provisions of this Act"

makes no distinction between enforcing "big duties" and "little duties".

The language of Paragraph 3 of Section 3 is general in character. The paragraph refers in general terms to "facilities * * * for the receiving, forwarding and delivering of passengers * * * from their respective lines and those connecting therewith * * *." No attempt is made to restrict "facilities"

to certain classes of facilities, such as those costing not over a specified sum of money, and to exclude other classes, such as facilities costing a larger sum of money.

As this Court said in *United States v. Hartwell*, 6 Wall. (Vol. 73) 385, 396:

> "When the words are general and include various classes of persons, there is no authority which would justify the court in restricting them to one class and excluding others, where the purpose of the statute is alike applicable to all."

While it may be conceded that jurisdiction over the construction and operation of union passenger depots will involve the enforcement of a "big duty" as distinguished from a "little duty" and will add to the Commission's work, we respectfully submit that these considerations should not weigh against the exercise of this jurisdiction by the Commission if, in fact, the Congress has conferred the jurisdiction upon the Commission. Substituting the Commission for the Supreme Court, we believe that the following words of Chief Justice Marshall in the famous case of *Cohens v. Virginia*, 6 Wheat. 264, are applicable (p. 404):

> "We (the Supreme Court) have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given * * *. Questions may accrue which we would gladly avoid, but we can not avoid them. All we can do, is to exercise our best judgment, and conscientiously to perform our duty."

This was also the view of the Court of Appeals of the District. After quoting Paragraph 3 of Section 3 of the Act, the Court said (R. 168-9):

> "This section, we think, vests the Interstate Commerce Commission with almost unlimited power in the matter of establishing terminals and union stations for the proper interchange of traffic between the converging interstate railroad lines. The term 'reasonable, proper, and equal facilities' is broad and comprehensive enough to include not only trackage but adequate station facilities."

e. Conclusion as to Paragraph 3 of Section 3.

As already shown, this Court has decided that the Interstate Commerce Commission *has* jurisdiction to enforce duties prescribed by Paragraph 3 of Section 3 of the Act.

One of the duties so prescribed is the duty, in a proper case, to construct and operate a union passenger station.

The final ground then relied on by the majority of the Commission, namely, a distinction between "big duties" and "little duties" under said Paragraph 3 of Section 3, appears to be contrary to the authorities and without merit.

Hence we submit, very respectfully, that by virtue of the provisions of Paragraph 3 of Section 3 of the Act, the Commission has the jurisdiction which the City of Los Angeles asks it to exercise.

3. UNDER PARAGRAPH 4 OF SECTION 3 OF THE INTERSTATE COMMERCE ACT, AS AMENDED, ALSO, THE INTERSTATE COMMERCE COMMISSION HAS JURISDICTION TO REQUIRE THE CONSTRUCTION AND OPERATION OF THE UNION PASSENGER STATION IN LOS ANGELES.

a. Paragraph 4 of Section 3.

We now invite the Court's attention to another paragraph of the Interstate Commerce Act, as amended, on which we also rely.

This is Paragraph 4 of Section 3 of the Act, which paragraph was added in 1920. This paragraph confers upon the Interstate Commerce Commission the power and authority, under the circumstances therein specified, to *require* the *use* of *terminal facilities,* of one carrier by another carrier or carriers.

This paragraph reads, in part, as follows:

> "If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced."

b. This Court decided in the Los Angeles Union Station Case that under Paragraph 4 of Section 3, the Interstate Commerce Commission has authority to require the construction and operation of a union passenger station, where the terminal facilities are already owned by one of the carriers.

Referring to Paragraph 4 of Section 3 of the Act, this Court in the *Los Angeles Union Station Case*, 264 U. S. 331, said (p. 343):

> "It (Paragraph 4) not only provides for the temporary expropriation of terminals and main track of one railway to the common use of one or more other railways in an emergency, *but it also contemplates the compulsory sharing of one company's terminals with one or more companies as a permanent arrangement.*"

The Court then comments on the effect of this legislation, as follows (pp. 343-4):

> "This is a drastic limitation on a carrier's control and use of its own property in order to secure convenience and dispatch for the whole shipping and traveling public in interstate commerce."

Then comes the following significant conclusion showing that the language of Paragraph 4 includes the case of a union passenger station (p. 344):

> "*It* (Paragraph 4) *gives to the Interstate Commerce Commission the power and duty, when the public interest requires, to make out of what is the passenger and freight station of one interstate carrier a union station or depot.*"

Here, then, is a direct decision by this Court that the Interstate Commerce Commission has the power to

require carriers to establish a union station or depot *where the terminal property is already in railroad ownership* and that it is the *duty* of the Commission to do so where the public interest requires.

c. The carriers now already own most of the lands and tracks needed for the Los Angeles union passenger station. Hence, under the decision of this Court in the Los Angeles Union Station Case, the Interstate Commerce Commission has authority under Paragraph 4 of Section 3 of the Act, to require the construction and operation of the Los Angeles union passenger station.

In the *Los Angeles Union Station Case,* this Court assumed, as was then (April 7, 1924) the case, that the land in the Plaza Area in Los Angeles where the proposed union passenger station is to be constructed was the property of *third persons* and did not pursue the subject further because the Court found in other sections of the Act sufficient means of control by the Interstate Commerce Commission (pp. 344-5).

However, the situation has now changed by reason of the fact that, subsequent to the date of said decision, the Southern Pacific Company has acquired the ownership of most of the lands involved in the proposed Plaza site location.

The facts as they now exist are set forth in Paragraph XVIII of the Petition for the Writ herein (R. 25-6).

Said Paragraph XVIII alleges as follows:

"That the carrying into effect of the union passenger depot order requested by the city of Los

Angeles, as aforesaid, would require to a substantial extent the joint use of existing railroad terminal facilities in or adjacent to the city of Los Angeles, including the following uses—the use by the Southern Pacific passenger trains from the north, of the Santa Fe main line tracks on the west bank of the Los Angeles river from a point north of the North Broadway Viaduct as far south as Aliso Street; the use by the Salt Lake passenger trains from Pasadena of the Santa Fe's tracks on the west bank of the river between the same points; the use by the Salt Lake passenger trains from the south of the Santa Fe's tracks from Hobart Junction on the south to the site of the proposed union passenger depot on the north, a total distance of approximately 3 miles; and the use by the Southern Pacific of the Salt Lake tracks on the east bank of the Los Angeles river from Alhambra Avenue southerly to Butte Street and thence west over the Salt Lake's Butte Street line to Alameda Street.

"That the site for the proposed union passenger station itself, within said Plaza Area, as said site is shown on said California Railroad Commission's Exhibit 4-b, consists of a total area of 36 acres, of which area 26.87 acres, being more than two-thirds of the total area, is already railroad terminal land owned by the Southern Pacific and to a small extent by the Santa Fe; that the Southern Pacific's portion of said land, being all except a small portion owned by the Santa Fe, was acquired by the Southern Pacific after the Supreme Court of the United States had rendered its said decision of April 7, 1924; that the railroad terminal land already so owned by said carriers includes the entire land on which the head house of the proposed union passenger station is to be located and almost all the land on which the station tracks are to be constructed; that the land

remaining in private ownership is only a small part required for station trackage together with some land west of Alameda Street desired for an appropriate approach to the head house, and is only land needed to 'round out' the project.

"That of the railroad terminal properties which would be jointly used in connection with the union passenger depot plan as to which the city of Los Angeles has requested said order, the entire trackage along the Los Angeles River and nearly all the land on which the union station structures are to be erected are already in the ownership of the Southern Pacific, the Santa Fe and the Salt Lake, respectively; that the joint use of said terminal facilities in connection with and as a part of said union passenger depot project would be in the public interest and would be practicable and would not substantially impair the ability of the carrier owning or entitled to the enjoyment of the same to handle its own business."

As will be noted, said Paragraph XVIII shows that of the railroad terminal properties which would be jointly used in connection with the union passenger depot plan, the entire trackage along the Los Angeles River and nearly all the land on which the union station structures are to be erected are already in the ownership of the Southern Pacific, the Santa Fe and the Salt Lake, respectively. The remaining land in private ownership is only a small part required for station trackage and for an appropriate approach to the head house, and is only land needed to "round out" the project.

That the appropriate public authority would have the right to direct the carriers to acquire, by eminent domain, if necessary, the additional land thus needed to "round out" the project, is well established. The following decisions hold that the fact that compliance with an order for the construction of a union passenger depot will require a railroad to acquire additional property by the exercise of the power of *eminent domain* does not militate against the validity of the order.

Railroad Commission of Alabama v. Northern Alabama Ry. Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern Ry. Co., 185 Ala. 354, 361, 64 So. 13, 15, 16;

Mayor and Aldermen of Worcester v. Norwich and Worcester Railroad Co., 109 Mass. 103;

Dewey v. Atlantic Coast Line, 142 N. C. 392, 55 S. E. 292;

State v. St. Louis Southwestern Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 498, 199 S. W. 829, 830.

On this point, see also

Wisconsin, Minnesota and Pacific Railroad v. Jacobson, 179 U. S. 287, 302, 45 L. Ed. 194, 201.

On the above facts, which are admitted by the answer, and on the decisions of the courts above referred to, we respectfully submit that the City of Los Angeles now has a clear case for action by the Interstate Com-

merce Commission under Paragraph 4 of Section 3 of the Act in addition to our rights under Paragraph 3 of the same Section.

The Court of Appeals of the District held that on the facts as they now exist the Interstate Commerce Commission has authority under Paragraph 4 as well as Paragraph 3 of Section 3 of the Act to make the *order* prayed for by the City of Los Angeles. On this point, the court said (R. 168):

> "We come now to the conceded facts as set forth in paragraph XVIII of the petition. The railroad terminal properties and trackage which would be used in carrying out the union depot plan, including the entire trackage along the Los Angeles river and nearly all of the land on which the union station is to be erected, are now owned by the three carriers here involved. The small portion of land still in private ownership is needed only for a proper approach to the main depot and for properly completing the project as planned. This land could be acquired, of course, by the carriers, either by purchase or by eminent domain under the direction of the appropriate public authority.
>
> "It thus appears that the whole project is such that under the Act it has been removed from the jurisdiction of the State Commission and placed within the jurisdiction of the Interstate Commerce Commission. If, in carrying out the project, necessity arises for the state to exercise its police power in the matter of protecting street crossings, etc., it would be merely incidental to the general scheme,—cooperative with and not hostile to the jurisdiction of the Interstate Commerce Commission.

> "The broad power conferred upon the Interstate Commerce Commission is set forth in paragraphs 3 and 4 of section 405 of the Act. Paragraph 4 empowers the Commission to regulate the terminal facilities of converging carriers to the extent of requiring an interchange of trackage by the different lines to facilitate the better operation and handling of freight and passengers."

After quoting Paragraph 3, the court concluded (R. 168-9):

> "This section, we think, vests the Interstate Commerce Commission with almost unlimited power in the matter of establishing terminals and union stations for the proper interchange of traffic between the converging interstate railroad lines. The term 'reasonable, proper, and equal facilities' is broad and comprehensive enough to include not only trackage but adequate station facilities."

While we have thus referred to the situation under Paragraph 4 of Section 3 of the Act, we ask the Court to bear in mind our conviction that under the preceding paragraph, namely, Paragraph 3, the Commission has full power and authority to require the construction of a union passenger station where, as here, the public interest requires such construction, entirely irrespective of whether the lands in the proposed station site are or are not already in railroad ownership.

VI.

OPPOSING ARGUMENTS OF INTERSTATE COMMERCE COMMISSION ANSWERED.

The brief of the Interstate Commerce Commission on file herein devotes itself to a single point with various sub-heads—a question of statutory construction—namely, does the Interstate Commerce Act, as amended by the Transportation Act, 1920 (41 Stat. 456), confer upon the Interstate Commerce Commission authority to make the order prayed for by the City of Los Angeles?

Conceding that Congress has authority to clothe the Commission with full power in the field of union passenger stations (Brief of Interstate Commerce Commission, p. 53), the only question argued in said brief is whether, in fact, Congress has conferred this authority upon the Commission.

No question of *merits* on the *facts* is here involved. Those questions have already all been decided in favor of the City of Los Angeles when the Commission made its *findings of fact* and issued its *certificates*.

As has already been noted, among the findings made by the Commission was the finding that the union station project advocated by the City of Los Angeles is "in the public interest".

The only remaining question is one of *law* as to the Commission's jurisdiction to make the *order* requested by the City of Los Angeles.

Counsel for the Commission has grouped his arguments under four principal points, each of which we shall now consider.

1. **ARGUMENT OF COMMISSION'S BRIEF THAT THE INTERSTATE COMMERCE ACT FAILS TO EMPOWER THE COMMISSION TO ORDER THE CONSTRUCTION OF UNION PASSENGER STATIONS FAILS TO GIVE EFFECT TO BOTH PARAGRAPHS 3 AND 4 OF SECTION 3 OF THE ACT, AS AMENDED BY THE TRANSPORTATION ACT, 1920.**

a. **The provisions of both Paragraphs 3 and 4 of Section 3 include union passenger stations.**

At pages 20 to 27 of its brief, the Commission urges that the Interstate Commerce Act does not contain any provision authorizing the Commission to order the construction of union passenger stations.

As we have already pointed out (The Law, V), it is quite clear from the decisions of this Court, of various state courts and of the Interstate Commerce Commission itself that the word "facilities" as used in Paragraph 3 of Section 3 of the Act and the words "terminal facilities" as used in Paragraph 4 of the same section, include union passenger stations.

At page 27 of its brief, the Commission, in effect, asks why if we are correct in our reliance on said Paragraph 3, did not the Commission make orders for the construction and operation of union passenger stations prior to the enactment of the Transportation Act, 1920. The answer is simple. Prior to 1920,

this paragraph, which was then numbered 2, contained this limiting and restrictive language:

> *"but this shall not be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."*

As it is almost impossible to imagine a union passenger station which does not, at least to some extent, involve the use by one carrier of the tracks or other terminal facilities of another carrier, the Commission, as a practical matter, was without authority, prior to 1920, to direct the construction of union passenger stations.

However, in 1920, the Transportation Act struck the above-quoted limiting and restrictive words from said paragraph and thus this obstacle was removed.

b. Interstate Commerce Commission has authority to enforce by order both Paragraphs 3 and 4 of Section 3 of the Act, in cases of union passenger stations.

(1) Paragraph 3 of Section 3.

At page 23 and following pages of his brief, counsel for the Commission urges that, in any event, the Interstate Commerce Act has not conferred on the Commission the power to enforce the *duties* prescribed by said paragraph. In this connection, counsel refers to *United States v. Pennsylvania R. R. Co.,* 242 U. S. 208.

This was the ground, as hereinbefore pointed out, on which the Commission, in its first decision, rested

its refusal to consider the evidence bearing on the City's request for the *order requiring* the construction and operation of a union passenger station. However, as has also been shown, this Court thereafter, in *Alabama & Vicksburg Railway Company v. Jackson & Eastern Railway Company,* 271 U. S. 244, decided that the Commission does have the power and authority to *require* the performance of the *duties* specified in Paragraph 3 of Section 3 of the Act. Hence, in its second decision, the Commission, apparently acknowledging the force and effect of this Court's decision, withdrew from its former position and rested its decision on a distinction between "big duties" and "little duties" under that paragraph.

The case of *Kentucky & I. Bridge Co. v. Louisville & N. R. Co.,* 37 Fed. 567, cited by counsel on page 28 of his brief, was decided in 1889, more than thirty years prior to the changes made by the Transportation Act, 1920, and is of little value in the solution of our present problem.

At pages 29 and 35 of its brief, the Commission quotes from this Court's decision in *Alabama & Vicksburg Railway Company v. Jackson & Eastern Railway Company,* 271 U. S. 244, but we do not find quoted the concluding portion of the decision, on which we rely (p. 250):

> "In matters relating to the construction, equipment, adaptation and use of interstate railroad lines, with the exceptions specifically set forth in paragraph 22, Congress has vested in the Commission the authority to find the facts and thereon

to exercise the necessary judgment. The Commission's power under paragraph 3 of section 3 to *require* the establishment of connections between the main lines of carriers was asserted by it in *Pittsburgh & W. V. R. Co. v. Lake Erie, A. & W. R. Co.,* 81 Inters. Com. Rep. 333, a case decided after the withdrawal by the Jackson & Eastern of its application to the Commission for leave to make the junction at Curran's crossing, and in *Chamber of Commerce v. Wichita Falls, R. & Ft. W. R. Co.,* 109 Inters. Com. Rep. 81. That its jurisdiction is exclusive was held in *People ex rel. New York C. R. Co. v. Public Serv. Commission,* 233 N. Y. 113, 119-121, 22 A. L. R. 1073, 135 N. E. 195. Compare *Lake Erie, A. & W. R. Co. v. Public Utilities Commission,* 109 Ohio St. 103, 141 N. E. 847."

The Court is respectfully referred to The Law, V, 2, c, of this brief, where the matter of the Commission's authority under Paragraph 3 of Section 3 of the Act is fully covered. We believe that we have there shown quite conclusively that, subsequent to the enactment of the Transportation Act, 1920, the Commission has had and now has the power and authority to enforce compliance with the *duties,* both "big" and "little" prescribed by Paragraph 3 of Section 3 of the Act.

(2) Paragraph 4 of Section 3.

Turning now to Paragraph 4 of Section 3 of the Act, the Commission has not claimed any impotency on its part, nor do we understand how, in view of the specific language of the paragraph and also in view of this Court's decision in the *Los Angeles Union*

Station Case, 264 U. S. 331, 343, 344, such claim could reasonably have been made.

c. Relative Scope of Paragraphs 3 and 4 of Section 3.

At page 34 of its brief, the Commission refers to "the proper interpretation of those paragraphs (Paragraphs 3 and 4 of Section 3) as construed together."

Under Paragraph 3, it is the duty of carriers, among other matters, to "afford all reasonable, proper, and equal facilities for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith".

That duty exists entirely irrespective of whether the *land* on which the facility is to be constructed is already owned by one or more of the carriers or whether it is owned by a third party. If it is owned by a third party, then, as we have already shown, the carriers affected, if they can not acquire the same by agreement with the owner, may avail themselves of the power of eminent domain.

However, the land to be jointly used in connection with such facility might already be owned by one or more of the carriers affected, in which event the owning carrier or carriers would, of course, be entitled to compensation to be paid by the other carrier or carriers. In that event, the very interesting question would arise as to how this compensation was to be ascertained in the event that the carriers affected might be unable to agree as to the amount thereof.

Resort to the courts in the exercise of the power of eminent domain would be open. However, the Congress determined that, in that event, it would be desirable to provide an alternative machinery for the ascertainment of such compensation. The Interstate Commerce Commission would already have jurisdiction, in many important respects, over the carrier property to be thus jointly used. By reason of the Commission's knowledge of the situation and its expert training and personnel, Congress decided that it would be wise to provide, as an alternative method of ascertaining said compensation, that the Interstate Commerce Commission, in the event of a failure of the carriers to agree, might fix a just and reasonable compensation to be paid for the use of said property, "to be ascertained on the principle controlling compensation in condemnation proceedings". It was specifically provided, however, that the resort of the owning carrier or carriers to the courts for the ascertainment of the just damages or compensation should be preserved.

It was because of this situation, going to the question of the determination of the compensation to be paid in case the property on which the facility was to be constructed and/or used was already in carrier ownership, that Congress, when it enacted the Transportation Act, 1920, added to Section 3 of the Interstate Commerce Act said Paragraph 4.

It is interesting to note that this is not the first time that a legislative body has provided that the com-

pensation to be paid for the taking of the property of a common carrier or other public utility may, as an alternative method available to the taker, be fixed and determined by the tribunal which, in many other important respects, already has jurisdiction over such property. The Constitution and Statutes of California contain such provisions. (Constitution of California, Article XII, Section 23a; Public Utilities Act of California, St. 1915, Chap. 91, p. 115, Sec. 47(b); *Marin Municipal Water District v. Marin Water & Power Company,* 178 Cal. 308; *East Bay Municipal Utility District v. Railroad Commission of California,* 194 Cal. 603.)

Hence, it would appear quite clearly that Paragraph 3 and Paragraph 4 of Section 3 were each enacted to cover a particular situation in which the Congress found that need for regulation existed and that neither of these paragraphs is in any way inconsistent with or exclusive of the other.

d. Comments of Chairman Esch.

In a footnote to pages 31 and 32 of its brief, the Commission refers, in support of an argument that Congress did not in 1920 intend "to encroach on State authority" (Brief of Interstate Commerce Commission, p. 33) in the matter of union passenger stations, to a statement made by Chairman Esch of the House Committee during the pendency of the Esch-Cummins Bill before the House of Representatives.

However, it seems to us quite clear that this statement does not support the Commission's contention, but, on the other hand, supports the distinction made by this Court in the *Los Angeles Union Station Case,* 264 U. S. 331, 345, between "merely local union stations or terminals" as to which the states may have retained jurisdiction pending an inconsistent lawful order of the Interstate Commerce Commission, and a union passenger station to be constructed and operated by "three great interstate railway systems in the largest city of our western coast" (p. 342). On that distinction, we rely.

Thus, Chairman Esch, in referring to depots and joint use of depots, said (Brief of Interstate Commerce Commission, page 31):

> "In such *small matters,* the *detail* should be left within the jurisdiction of the State authorities, who know the conditions, and know how best to meet the needs."

Again, a little further:

> "Due to the prohibitive cost of land, it is necessary to get a greater use out of existing terminals by giving to some regulatory authority, like the Interstate Commerce Commission, the right to order the joint use of such terminals, but that that power should be exercised as to *depots in small communities* is not contemplated. That power should be left, as we leave it, to the regulatory bodies of the several States."

We submit that Chairman Esch in referring to the "small matters" and to the "depots in small com-

munities", had in mind the precise distinction which was made by this Court in the *Los Angeles Union Station Case,* supra, and that his statement supports our view of the case and not that of the Commission in a situation such as that now before this Court involving, as this Court has said, the construction "of an *interstate* union depot in the City of Los Angeles" (p. 338).

2. ARGUMENT OF COMMISSION'S BRIEF AS TO DECISION OF THIS COURT IN LOS ANGELES UNION STATION CASE FAILS TO GIVE EFFECT TO THOSE PORTIONS OF DECISION WHICH DECLARE COMMISSION'S MANDATORY POWER AS TO UNION PASSENGER STATIONS.

On pages 37 to 48 of his brief, counsel for the Commission presents an argument to the effect that this Court, in deciding the *Los Angeles Union Station Case,* held that the Interstate Commerce Commission is not empowered to require the construction of union passenger stations.

Counsel argues that the effect of said decision is to hold that the Commission has merely an "indirect and restrictive" and a "preventive" "means of control" over the construction of union passenger stations even by great interstate railway systems in the largest cities of the country. By the use of these words, many times repeated, counsel has apparently firmly convinced himself of the correctness of his view.

Counsel's position is thus stated (Brief of Interstate Commerce Commission, p. 19):

> "By reason of its power to grant or withhold permission for the incidental rearrangement of main line track, the Commission is now possessed of an *indirect means of control* over the establishment of union stations whereby it may *prevent* the same if it considers that it would result detrimentally to the interests of interstate commerce. But the effect of the exercise of that *indirect and restrictive means of control* would merely be *to preserve the existing status* of the railroads and cities affected."

We believe that counsel has overlooked the fact that after this Court had carefully analyzed the situation as to the first *two* steps in the problem, namely, the Commission's *findings of fact* and its *certificates,* the Court addressed itself to the *third* and final step, namely, the *order,* and said (pp. 347-8):

> "We were advised by statements at the bar after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission, asking for an *order* to provide, maintain and use a union station, that a hearing followed and that, pending the decision of this Court, the matter is held under consideration.
>
> *"For the reasons given, we think the course taken by the City of Los Angeles was the correct one."*

The City of Los Angeles has continued to follow that course, steadfastly, ever since.

We respectfully submit that counsel has misunderstood and failed to give effect to this Court's decision and that, when properly understood, the decision holds

that the Commission has power to require the construction of union passenger stations, in proper cases, both when the land is already owned by the carrier or carriers (Paragraphs 3 and 4 of Section 3) and where the land is still owned by third parties (Paragraph 3 of Section 3).

a. Paragraph 3 of Section 3.

As we read the decision, this Court does three things, as follows:

(1) Decides that the Supreme Court of California was correct when it held that the California Railroad Commission no longer has power to require railroads to build an interstate union depot in the City of Los Angeles, for the reason that the subject matter has been committed to the Interstate Commerce Commission by the Transportation Act of 1920 (264 U. S. 331, 338, 341, 348);

(2) Analyzes the provisions of the Interstate Commerce Act in so far as they bear on *findings* to be made and *certificates* to be issued by the Interstate Commerce Commission as conditions precedent to an *order* for the construction of a union passenger depot (264 U. S. 331, 342-8); and

(3) Holds that the City of Los Angeles pursued the correct course when it filed its petition with the Interstate Commerce Commission asking for an *order* for the construction, maintenance and use of a union passenger station (264 U. S. 331, 347-8).

We do not believe that this Court would have stated that the course taken by the City of Los Angeles was the correct one if the Interstate Commerce Commission was, in fact, without jurisdiction to make the very *order* for which the City was petitioning and to which the Court was referring.

Counsel for the Commission has referred in his brief to the first two of the above three matters but has apparently failed to grasp the significance of the third.

This is one of the many instances in which a state or federal commission is required, under the law, to make its *findings of fact* and to issue certain *certificates* as preliminary to the making of an *order* directing or requiring that an act be done. So here, the final *order* directing and requiring the construction and use of a union passenger station can not be made until after the Commission has first made the requisite *findings* and issued the necessary *certificates.* Hence it was entirely natural for this Court to analyze first the requirements of the Interstate Commerce Act with reference to findings and certificates before addressing itself to the final step to be taken by the Commission, which is an *order,* based on said *findings* and *certificates.* After having made such analysis, this Court, in the concluding paragraphs of its decision said (264 U. S. 331, 347-8):

> "We were advised by statements at the bar that after the California Supreme Court handed down its decision in this case, the City of Los Angeles

filed a petition with the Interstate Commerce Commission asking for an *order* to provide, maintain and use a union station, that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.

"For the reasons given, *we think the course taken by the City of Los Angeles was the correct one.*"

The Court then adds, quite naturally and in entire harmony with its earlier analysis, that until the Commission has acted under Paragraphs 18 to 21 of Section 402 of the Transportation Act (referring to its *findings* and *certificates*) the carriers can not be *required* to provide a new interstate union station and to extend their tracks thereto. The things to be done are then identified as being the things which the State Railroad Commission has ordered the carriers to do.

Knowing exactly the nature and character of the relief which the City of Los Angeles was asking in its case before the Interstate Commerce Commission, namely, an *order requiring* the carriers to provide, maintain and use a union station, this Court held that the course taken by the City of Los Angeles in filing its petition with the Interstate Commerce Commission was the correct one.

At page 44 of his brief, counsel says that the character of *order* referred to by this Court was "merely its permissive *order* or *certificate* under said Paragraphs (18) to (21) granting authority for the rearrangement of main-line track that would be incidental to the establishment of union stations".

In this statement, we believe that we find the reason for what we believe to be counsel's failure to understand this Court's decision. In this statement, counsel shows (1) that he is mistaken as to the *fact* of the character of the order for which the City had asked and (2) that he is apparently of the view that an *order* and *a certificate* are one and the same thing and that there is no distinction between them.

Referring first to counsel's error on the question of fact, the City did not ask for any merely "permissive order".

The City of Los Angeles asked for an order *directing* and *requiring* that acts be done, including, among others, an order "commanding" said defendants (namely, the carriers) * * * "to construct and thereafter operate and use a union passenger depot and appurtenances on a site located within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River, and to acquire such land, if any, as may be necessary for said purpose" (R. 46).

The City's prayer for relief appears on pages 45 and 46 of the printed record herein and we respectfully ask the Court to refer to the same. The Court will find that the prayer was for an *order commanding* the defendant carriers to take action. It was in no sense, as stated by counsel for the Commission, "merely a permissive order" (Brief of Interstate Commerce Commission, p. 44).

Referring next to counsel's confusion in the use of the words "order or certificate" (which are quite different matters), it may be well to bear in mind the distinction between three different terms, which this Court used with precise accuracy in its decision in the *Los Angeles Union Station Case,* as follows:

(1) *Findings.*

These are findings of fact made by the Commission and do not have the effect of an order. They are merely preliminary to an order. For the findings made by the Commission in the *Los Angeles Passenger Terminal Cases,* see the printed record herein at pages 87-8 and 139-40 and compare the findings made by the California Railroad Commission at pages 147-9.

(2) *Certificates.*

These are formal certifications which are set out by the Commission separately and formally, following its opinion. They, likewise, do not direct or require that anything be done and do not have the force of an order. See the printed record pages 146-7 for the certificates issued by the Commission in its second decision in the *Los Angeles Passenger Terminal Cases.*

(3) *Order.*

This is a direction to do or refrain from doing some act. Where, as here, it is necessary for the Commission first to make findings of facts and issue certificates, the order follows the opinion and the certificates.

The Court used each of the above three terms with great care and in the same sense in which they are used in the Interstate Commerce Act. The Court first referred to and analyzed the provisions of the Act bearing on the Commission's *findings* and *certificates.* Turning then to the final step, which is the *order,* the Court held, as we have already pointed out, that the City of Los Angeles followed the correct course when it filed with the Interstate Commerce Commission its petition asking for an *order* to provide, maintain and use the union station.

The Court thoroughly understood the situation and, so understanding it, decided that the course taken by the City in asking for such order was the correct one. In so holding, we believe that this Court decided the issue of the Interstate Commerce Commission's jurisdiction on the precise facts here under consideration.

b. Paragraph 4 of Section 3.

As already shown, this Court, in the *Los Angeles Union Station Case,* directly held that in cases falling within Paragraph 4 of Section 3 of the Act, the Interstate Commerce Commission has not merely the *power* but also the *duty,* where the public interest requires, to direct the construction and/or use of a union station or depot (264 U. S. 331, 344). It is true that at the time when said decision was rendered (April 7, 1924) this Court was of the opinion that said Paragraph 4 of Section 3 was inapplicable to the facts of the Los Angeles Union Passenger Station situation

for the reason that at that time most of the land which would be needed for the union passenger station site was still in the ownership of third parties. However, subsequent to that decision, those lands were acquired by the Southern Pacific Company from the El Paso & Southwestern Railroad Company which had acquired the same for its proposed terminal in the City of Los Angeles (R. 76—Footnote) and said lands, together with another portion of the site over which the Santa Fe now owns and operates its main line passenger tracks, are now owned by the carriers.

Hence, we believe that on the facts as they now exist this Court would have held that the Interstate Commerce Commission has jurisdiction under the provisions of Paragraph 4 of Section 3 as well as Paragraph 3 of Section 3 of the Act.

As we have already shown, the Court of Appeals understood this Court's decision in the *Los Angeles Union Station Case* as we have always understood it. The concluding paragraph of the court's decision reads as follows (R. 170):

> "The procedure adopted by the City of Los Angeles in applying to the Interstate Commerce Commission for an order requiring the carriers to establish the union station in question was approved in the concluding words of the opinion in the Los Angeles Case, where the court said: 'We were advised by statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed

a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station, that a hearing followed and that, pending the decision in this court, the matter is held under consideration. For the reasons given, we think the course taken by the City of Los Angeles was the correct one.' "

3. ARGUMENT OF COMMISSION'S BRIEF THAT THE CONGRESSSIONAL PLAN WAS TO GIVE TO INTERSTATE COMMERCE COMMISSION ONLY INDIRECT AND RESTRICTIVE POWERS AS TO UNION PASSENGER STATIONS IS UNSOUND.

At pages 48 to 55 of his brief, counsel for the Commission next makes the argument that in entering into a new field it is the Congressional Plan to proceed cautiously and haltingly and to confer on the Commission at first only indirect and restrictive powers.

It is, of course, true that certain powers conferred on the Commission by the Transportation Act, 1920, were only permissive. This is the case as to the consolidation provisions (*Snyder v. New York, C. & St. L. R. Co.*, 118 Ohio St. 42, 160 N. E. 615) and the issue of securities.

But it by no means follows from these two instances that everything else which Congress did when it enacted the Transportation Act, 1920, was done cautiously, haltingly or limpingly. We had been of the impression that, viewed as a whole, the Transportation Act was a vigorous, forward-looking, constructive enactment.

Even applying counsel's test, we submit that after Congress had for more than thirty years withheld from the Commission the power to take constructive, affirmative action in major matters under Paragraph 3 of Section 3 by the retention of the restrictive words

> "but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business",

Congress had permitted the lapse of sufficient time for caution and circumspection when, in 1920, it removed the above hobble from Paragraph 3 and also enacted Paragraph 4 of Section 3 of the Act.

We shall now refer, very briefly, to a few special points listed by counsel in this section of his brief.

a. New National Railroad Policy—Union Passenger Stations.

Under the head of The Law, III, we have set forth what we have understood to be the New National Railroad Policy, established by the Transportation Act, 1920, as distinguished from counsel's "Cautious Approach Congressional Plan" as explained on pages 48 to 55 of his brief.

In pursuance of its policy to strengthen the power and authority of the Commission, Congress, in the Transportation Act, in addition to dealing with many other subjects, took the following action with reference to *union passenger depots:*

(1) As to Paragraph 3 of Section 3, struck out the limiting words which had theretofore had

the effect of preventing any order of the Commission for the construction and operation of a union passenger station; and

(2) As to Paragraph 4 of Section 3, added this paragraph in toto, thus establishing a machinery by which the Commission itself may fix the compensation to be paid to an owning carrier whose property is to be jointly used by another carrier or carriers.

In view both of the general congressional plan and of the specific action of Congress on the subject of union passenger depots, we can not believe that counsel for the Commission is correct when he argues, repeatedly, that the authority which Congress has conferred on the Commission on the subject of union passenger depots is merely "indirect and restrictive" or "permissive" alone or merely "preventive".

The very case of intrastate rates discriminating against interstate commerce cited by counsel on page 50 of his brief illustrates, in our opinion, much more correctly the action taken by the Congress in 1920. As counsel points out, prior to 1920 the Commission's authority as to such rates was only indirect; but the Transportation Act authorized the Commission to deal directly with such rates, i. e., affirmatively order the establishment of such intrastate rates as will remove the discrimination. *Railroad Commission of Wisconsin v. C. B. & Q. R. Co.*, 257 U. S. 563, 584. Is it reasonable to assume that Congress, while taking this

forward step as to such intrastate rates and many other matters should at the same time have taken the *backward* step of superseding the direct, affirmative power of the States as to union passenger stations and substituting for the same a mere "negative, indirect or restrictive" power?

Referring again specifically to union passenger stations, is it reasonable to assume that Congress, while conferring the clearly established direct and affirmative power where the *land* is already in railroad ownership (Paragraph 4 of Section 3) should have conferred only a "negative, indirect or restrictive" power if the land happened to be still owned by John Smith, a third party?

Is there any reason why the new national railroad policy should stop at the line which bounds terminal land already in railroad ownership and refuse to extend beyond to the lands of third parties?

Is there any rhyme or reason for any such distinction?

b. Local Matters.

At pages 18, 48 to 50 and 54 of his brief, counsel for the Commission presents an argument to the effect that the installation of union passenger stations in large cities involves problems "peculiarly" or "primarily" of *local concern* which are subject to the police power of the states and that hence an intent by Congress to "invade" that field must be found in ex-

the effect of preventing any order of the Commission for the construction and operation of a union passenger station; and

(2) As to Paragraph 4 of Section 3, added this paragraph in toto, thus establishing a machinery by which the Commission itself may fix the compensation to be paid to an owning carrier whose property is to be jointly used by another carrier or carriers.

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press language. Counsel says further that the jurisdiction here claimed for the Interstate Commerce Commission "would trench on State authority".

We submit, very respectfully, that the conclusive answer to this argument is found in the decision of this Court in the *Los Angeles Union Station Case,* in which case this Court points out that the union passenger station here proposed for "three great interstate railway systems in the largest city of our western coast" is *not* a *"local union station"* but is a station of an entirely different character which is subject to the jurisdiction of the Interstate Commerce Commission (264 U. S. 331, 342, 346, 347).

At page 345, the Court expresses its views with reference to the kind of *local union station or terminal* to which counsel's argument might apply and over which a state commission might, under the police power, retain jurisdiction, as follows:

> "One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of *merely local union stations* or terminals *without extensions of main tracks and substantial capital outlay* should be regarded as an *ordinary exercise of the police power of the state* for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers."

The Court, however, hastened to point out that such a purely local situation would be far different from

that presented in the Los Angeles case and in this connection said (p. 346):

> "But there is a great difference between such relocation of tracks or *local union stations and what is proposed here.* The differences are more than that of mere degree, they and their consequences are so marked as to constitute a *change in kind.*"

The difference between a purely local situation over which the state would retain its control under the police power and the facts of the Los Angeles union passenger station case was further emphasized by this Court in its recent decision in *Lehigh Valley Railroad Company v. Board of Public Utility Commissioners,* 278 U. S. 24, decided on November 19, 1928. The Court there upheld an order of the Board of Public Utility Commissioners of New Jersey requiring the Lehigh Valley Railroad Company to expend $324,000 in eliminating two railroad grade crossings and substituting an overhead crossing. In the course of its decision, the Court takes occasion to distinguish between *"purely parochial matters"* such as the elimination of railroad grade crossings without anything further, and a union passenger station such as that proposed for Los Angeles, as follows (p. 35):

> "It certainly was not intended by the Transportation Act to take from the States or to thrust upon the Interstate Commerce Commission investigation into *parochial matters* like this, unless by reason of their effect on economical management and service their general bearing is clear.

Railroad Commission v. Southern Pacific Company, 264 U. S. 331."

(NOTE: This is the decision to which we have been referring as the *Los Angeles Union Station Case.*)

The Court then proceeds as follows:

> "The latter case makes a *distinction between* the *local character of* the *normal elimination of grade crossings and* the *vital character* from the standpoint of finance of the investment of large sums *in the erection of a union station.*"

This most recent decision of this Court thus emphasizes the distinction between matters of a purely "local" or "parochial" character such as the elimination of the ordinary railroad grade crossing (which matters are, within limits, left to the states under their police powers) and the vitally different matters of union passenger stations in large cities, such as the one proposed for Los Angeles (which matters fall within the jurisdiction of the Federal Government under the commerce clause of the Federal Constitution and the statutes enacted thereunder).

We believe that it must be apparent that the powers which Congress has conferred upon the Interstate Commerce Commission in the matter of union passenger stations in no way "trench upon the State's authority" or constitute an "invasion of the field" as urged by counsel for the Commission (Brief of Interstate Commerce Commission, pp. 48-9, 54), but that they were conferred under and in accordance with the "commerce clause" of the Federal Constitution.

We do not believe that it is accurate to speak of the exercise of a Federal power conferred by the Federal Constitution as a "trenching upon" or an "encroachment upon" the police power of the States. In fact, the shoe is upon the other foot, as appears from the decision of this Court in the *Los Angeles Union Station Case,* in which case (264 U. S. 331, 345) the Court says that one might conceive of cases of merely local union stations as to which the ordinary exercise by the state of its police power

> "would not *trench* upon the power and supervision of the Interstate Commerce Commission in securing proper regulation for an interchange of interstate traffic or passengers."

c. The Proviso in Paragraph 17 of Section 1 of the Act.

At page 49 of his brief, counsel for the Commission relies on the proviso in Paragraph 17 of Section 1 of the Act, reading as follows:

> "Provided, however, that nothing in this Act shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for *intrastate* business, *except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act.*"

Attention is invited to the fact that through what seems clearly to be a clerical error, said proviso, as printed on page 49 of the Commission's brief, omits the very important words "for intrastate business" which occur next after the words "passenger service".

The above proviso is quoted by counsel in support of his argument that Congress has at all times had in mind the inhibition against "encroachment" of Federal authority upon the rights of the States.

Said proviso was also quoted by this Court in the *Los Angeles Union Station Case* (264 U. S. 331, 346), but only in connection with a situation so distinctly local that it might be regarded as left to the state under its police powers but even in such a case, so distinctly local in character, "a lawful order of the Interstate Commerce Commission would raise a question of the power of the State Commission".

In other words, this proviso is not a reservation of power to the States but rather an express declaration that an order of state authorities, under the police power, relating to freight or passenger service for *intrastate business* must fall in so far as it is inconsistent with a lawful order of the Interstate Commerce Commission made under the provisions of the Interstate Commerce Act.

d. Absence of Notice to State Authorities.

At page 49 of his brief, counsel for the Commission argues that whenever Congress intends to confer upon the Interstate Commerce Commission authority to act in a matter which, as he says, "trenches upon the State's authority", provision is made for *notice* to State authorities and opportunity to appear at a *hearing*. From the fact that no such provision for

notice and hearing appears in the Act in connection with Paragraphs 3 and 4 of Section 3, counsel argues that it could not have been intended by those paragraphs to confer any "direct or affirmative" authority on the Commission.

It is true, of course, that in a few matters, such as extensions and abandonments of lines, consolidations and attacks upon state rates, Congress has provided for such notice and hearing.

However, in other matters likewise important to the States, in which "direct and affirmative" power has unquestionably been conferred upon the Commission, no provision for such notice or hearing has been made. See, in this connection, the following provisions of the Act:

Regulation of car service—Sec. 1, Pars. 10-14.

Establishment of facilities for interchange of traffic and for receipt, forwarding and delivery of passengers (conceded as to connecting tracks)—Sec. 3, Par. 3.

Joint use of existing terminal properties—Sec. 3, Par. 4.

Establishment of through routes and joint rates between rail and water lines—Sec. 6, Par. 13.

Establishment of rates, classifications, regulations and practices—Sec. 15, Par. 1.

Establishment of through routes and joint rates between rail lines—Sec. 15, Par. 3.

Numerous other illustrations could be cited, but we believe that the foregoing are sufficient.

We know of no decision pointing to the presence or the absence of provision for such notice or hearing as having any significance in connection with the question whether or not a "direct and affirmative" power has been conferred upon the Interstate Commerce Commission.

In fact, counsel's argument would seem to have been answered by two recent decisions of this Court holding that under Paragraphs 3 and 4 of Section 3 of the Act (the very paragraphs here under consideration) "direct and affirmative" power has been conferred upon the Commission, though neither of said paragraphs contains any provision for such notice or hearing. We refer, of course, to

Alabama & Vicksburg Ry. Co. v. Jackson & Eastern Ry. Co., 271 U. S. 244;

Los Angeles Union Station Case, 264 U. S. 331.

We believe that this argument requires no further consideration.

In concluding our comments on this third main point of counsel for the Commission, we submit that as far as the argument concerning the "Congressional Plan" is concerned, the action of Congress in amending Paragraph 3 of Section 3 and adding Paragraph 4 to Section 3 in 1920 was in entire harmony and accord

with the New National Railroad Policy made effective by the Transportation Act and that said policy, in general, is an affirmative, constructive and forward-looking policy and not a policy of "cautious and halting approach", as argued by counsel for the Interstate Commerce Commission.

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4. ARGUMENT OF COMMISSION'S BRIEF THAT THE STATES HAVE BEEN DIVESTED OF AUTHORITY TO ORDER CONSTRUCTION OF UNION PASSENGER STATIONS BUT THAT SUCH AUTHORITY HAS NOT BEEN CONFERRED ON THE INTERSTATE COMMERCE COMMISSION WOULD RESULT IN THE INABILITY OF ANY PUBLIC AUTHORITY, STATE OR FEDERAL, TO MAKE THE ORDER PRAYED FOR BY THE CITY OF LOS ANGELES AND WOULD MAKE ALL PUBLIC AUTHORITY IMPOTENT IN THAT RESPECT.

In the fourth section of his brief (Brief of Interstate Commerce Commission, pp. 55-62), counsel refers to certain decisions in which it was held that the authority of the States had not been excluded by Congressional action and to other decisions in which the contrary conclusion was reached. In some of the latter cases, it was held that Congress had manifested an intention to exclude further State action, while, at the same time, failing to confer authority upon any Federal agency.

It has not been clear to us on which of these two lines of decisions counsel intends to rely in the present case.

However, we judge from the heading of this section of his brief (p. 55) that counsel intends to take the position that the mere act of exclusion of the States from a certain field of interstate commerce does not necessarily mean a concurrent vesting of like authority in the Interstate Commerce Commission. With this statement we can, of course, readily agree. However, in our opinion, the matter has no proper application here for the simple reason that the same provisions of the Transportation Act which divested the States of authority in this field also clearly vested the authority in the Interstate Commerce Commission.

In *Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of California,* 190 Cal. 214, 227, the Supreme Court of California held that

> "full power and authority over the matter of union terminal depot facilities of the railroads which are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission under the terms of said Amendatory Act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject sought by it to be exercised in the several proceedings before it and by the order presented for review herein."

As has already been noted, the judgment of the Supreme Court of California annulling the order of the Railroad Commission of California for the reasons above stated was thereafter affirmed by this Court. *Los Angeles Union Station Case,* 264 U. S. 331.

These decisions are in harmony with the well-established rule that when Congress acts in such a way as to manifest its purpose to exercise its constitutional authority, the regulating power of the State ceases to exist.

Northern Pacific Railway Co. v. Washington, 222 U. S. 370;

Adams Express Co. v. Croninger, 226 U. S. 491;

Erie Railroad Co. v. People, 233 U. S. 671;

Southern Railway Co. v. Railroad Commission of Indiana, 236 U. S. 439;

Charleston & Western Carolina Railway Co. v. Varnville Furniture Co., 237 U. S. 597;

O. W. R. & N. R. R. Co. v. Washington, 270 U. S. 87;

Napier v. Atlantic Coast Line Railroad Co., 272 U. S. 605.

Hence we find ourselves in this position. The State of California has been divested of its power and authority to require the construction and operation of a union passenger station in Los Angeles. The Supreme Court of California has so decided and that decision has been affirmed by this Court. If counsel's argument is correct, Congress, while rendering impossible the further exercise of that power by the States, has, at the same time failed to confer it upon the Interstate Commerce Commission. Consequently, under counsel's argument, no public authority, either

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State or Federal, now has authority to make the order prayed for by the City of Los Angeles, and all public authority is now impotent in that respect.

The conclusion of a *vacuum* to which counsel's argument leads is obviously so contrary to the public interest that it should not be reached unless there is no escape therefrom.

> *Cleveland, C. C. & St. L. Ry. Co. v. United States,* 275 U. S. 404, 412.

This Court, in the *Los Angeles Union Station Case,* avoided any such conclusion by finding that the Interstate Commerce Commission now has full and complete authority not only to make findings and issue certificates but also to make the final mandatory order.

The decision of this Court is all the more significant when it is remembered that there was no one before the Court advocating any mandatory authority in the Commission. The Court might well have disposed of the matter by a mere affirmance of the decision of the Supreme Court of California. However, from an obvious desire to render a constructive service, the Court went further and set forth clearly the power and authority of the Interstate Commerce Commission, not merely to make the preliminary findings of fact and issue the necessary certificates but also to issue the final mandatory order.

The City of Los Angeles is grateful to the Court for the assistance which the Court thus rendered to all parties interested in this highly important prob-

lem and hopes that it has not been in error in following steadfastly the simple, direct and constructive course which it understood the Court to have charted in its said decision.

VII.

CONCLUSION.

In conclusion, we submit, very respectfully:

1. That under both Paragraphs 3 and 4 of Section 3 of the Interstate Commerce Act, the Interstate Commerce Commission has power to require the construction and operation of the union passenger station as prayed for by the City of Los Angeles;

2. That the conclusion just stated is in harmony with the new national railroad policy made effective by Congress in the Transportation Act, 1920;

3. That said conclusion follows inescapably from the decision of this Court in the *Los Angeles Union Station Case,* the *Alabama & Vicksburg Railway Company Case,* the *Lehigh Valley Railroad Company Case* and other cases;

4. That said conclusion avoids the vacuum which would otherwise exist, under which no public authority would any longer have authority to direct the construction of union passenger stations even though the public interest clearly so requires; and

5. The Commission having refused to consider the evidence bearing on this issue, by reason of an erro-

neous view on the subject of its jurisdiction, the writ of mandamus should issue as prayed for.

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Dated: October 21, 1929.

(APPENDIX FOLLOWS.)